



**Swift Networks Pty Ltd**

**ABN 96 125 828 453**

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ACCEPTABLE and FAIR & SAFE USE POLICIES

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# Acceptable Use Policy

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## 1 Acceptable Use Policy

This policy is designed to ensure that your use of the service does not break any laws, hinder the efficient operation of our network, interfere with the rights of Optus Internet customers, or interfere more generally with the rights of Internet users.

You are responsible for ensuring that use of the service and your account complies with this policy. You are also responsible for any use of the service even if, for example, it was used, with or without your consent, by a friend, family member, guest or employee who gains access to the service or your account.

### 1.1 Acceptable Use Policy

This acceptable use policy sets out the terms between you and us under which you may use our Service.

Your use of our Services means that you accept, and agree to abide by, all the policies in this acceptable use policy, which supplement our other agreements.

### 1.2 Prohibited Uses

You may use our Service only for lawful purposes. You may not use our Services:

- In any way that breaches any applicable local, national or international law or regulation.
- In any way that is unlawful or fraudulent or has any unlawful or fraudulent purpose or effect.
- For the purpose of harming or attempting to harm minors in any way.
- To send, knowingly receive, upload, download, use or re-use any material which does not comply with these terms and conditions or which we have previously removed from the Website.
- To transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam).
- To knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware.
- Posting, disseminating, or in some cases accessing, content which is unlawful, including:
  - content that is or would be classified by the Classification Board as RC rated or X rated and that is or would be classified by the Classification Board as R rated where a restricted access system is not in place,
  - content which violates the copyright or other intellectual property rights of others. You assume all risks regarding the determination of whether material is in the public domain, or
  - content that defames, harasses or abuses anyone or violates their privacy,
- In relation to any Pyramid or other illegal soliciting schemes.

You also agree:

- Not to reproduce, duplicate, copy or re-sell any of our Services.
- Not to access without authority, interfere with, damage or disrupt or Services, Equipment or Facilities of those of our Providers and Partners.

### 1.3 Security

You are responsible for any use or misuse of the Services. You must take reasonable steps to ensure that others do not gain unauthorised access to your Service and your account.

Some activities that you can perform when accessing the Internet may be harmful or cause loss to you, other people that may access your Service or your Equipment. You bear all risk associated with such activities.

The Service must not be used to obtain or attempt to obtain unauthorised access to any computer, system or network. If you do not have authorisation, prohibited activities include (but are not limited to):

- accessing, monitoring or using any data, systems or networks,
- probing, scanning or testing the vulnerability of a system or network,
- breaching any security or authentication measures for a system or network,
- accessing the account or private information of any other person or entity,
- accessing any server in violation of any acceptable use policy of that server, including any attempt to do any of the things mentioned in paragraphs (i) to (iv) above.

You must not:

- use (or attempt to use) or distribute tools designed for compromising security including, but not limited to, password guessing programs, cracking tools, packet sniffers or network probing tools,
- knowingly transmit or disseminate any information or software, which contains a virus or other harmful feature,
- use (or attempt to use) the service in a manner that may interfere with the technical operation of the service or any other computer, system, network or telecommunications services, including (but not limited to) denial of service attacks, flooding of a network, overloading a service, improper seizing and abuse of operator privileges and attempts to 'crash' a host, or
- interfere (or attempt to interfere) with the regular workings of our systems or network connections.

You are solely responsible for the security of any device you choose to connect to the Service, including any data stored on that device.

We recommend against enabling file or printer sharing of any sort. We recommend that any files or services you do choose to make available for remote access be protected with a password or other appropriate measures to prevent unauthorised access.

You must notify us immediately of any unauthorised or attempted unauthorised use of your service and any other breach or attempted breach of security.

#### 1.4 Interactive Services

You may have access to interactive services through our Services, without limitation:

- Chat rooms
- Bulletin boards
- Forums

Where we do access such interactive service, you must comply with their terms of use and you are solely responsible for any use thereof.

#### 1.5 Content Publishing

You are solely responsible for any content that you publish via websites, email, newsgroups, online forums or other publishing mediums accessed via the service.

You must take appropriate precautions to prevent minors from accessing or receiving any content you have published that may be inappropriate for them. This includes implementing a restricted access system on content that is or would be classified by the Classification Board as R rated. We also encourage you to use appropriate warnings and / or labelling systems in respect of content which is likely to be considered unsuitable for children.

Commonwealth legislation allows the Australian Communications and Media Authority to direct us to remove certain prohibited or potentially prohibited content from our servers or to prevent users from accessing certain Internet content. We may take any steps necessary in order to ensure compliance with any relevant industry code of practice, or notification or direction from the Australian Communications and Media Authority, including removing any content (including part or all of a website) from our servers, blocking access to newsgroups, closing or suspending your Optus Internet account, filtering the Internet

content made available to you or restricting access to a particular website. We may take these steps at any time and without notice to you.

Commonwealth legislation allows copyright owners or their agents to direct us to remove copyright materials from our servers or to prevent users from accessing copyright materials. We may take any steps necessary in order to ensure compliance with a notification from a copyright owner or their agent, including removing any content (including part or all of a website) from our servers, closing or suspending your Optus Internet account, filtering the Internet content made available to you or restricting access to a particular website. We may take these steps at any time and without notice to you.

We are under no obligation to monitor transmissions or published content on the service. However, we (or our agents) have the right to monitor such transmissions or published content from time to time to ensure that you are complying with the terms of this policy, and to disclose that content as required.

By using the Service to reproduce, publish, display, transmit or distribute content, you warrant that the content complies with this policy and authorises us (or our agents) to reproduce, publish, display, transmit and distribute such content as necessary for us to deliver the content in a timely manner.

### 1.6 The Actions we take

We are not obligated to regularly monitor your usage of the service (including any content posted, disseminated or accessed by you), however we reserve the right to monitor your use of the Services to identify violations of this policy, and to protect our Facility, the other users of this Service.

We reserve the right to investigate any use of the Services that we reasonably suspect violates this policy, including the gathering of information from the user(s) involved and the complaining party, if any, and examination of transmissions and material on our servers and network. During an investigation, we may suspend the Optus Internet account(s) involved, interrupt transmissions and/or remove material that we reasonably believe potentially violates this policy.

We will determine, in our discretion, whether there has been a breach of this acceptable use policy through your use of our Services. When a breach of this policy has occurred, we may subject to the TCP Code, take such action as we deem appropriate.

Failure to comply with this acceptable use policy constitutes a material breach of the terms of use upon which you are permitted to use our Services, and may result in our taking all or any of the following actions:

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- Immediate, temporary or permanent withdrawal of your right to use our Services.
- Immediate, temporary or permanent removal of any posting or material uploaded by you..
- Issue a warning to you.
- Take legal proceedings against you for reimbursement of all costs on an indemnity basis (including, but not limited to, reasonable administrative and legal costs) resulting from the breach.
- Take further legal action against you.
- Disclosure of such information to law enforcement authorities as we reasonably feel is necessary.

Any failure by us to enforce this policy, for whatever reason, shall not necessarily be construed as a waiver of any right to do so at any time.

We exclude liability for actions taken in response to breaches of this acceptable use policy. The responses described in this policy are not limited, and we may take any other action we reasonably deem appropriate.

### 1.7 Changes

We may revise this acceptable use policy at any time by amending this page. You are expected to check this page from time to time to take notice of any changes we make, as they are legally binding on you. Some of the provisions contained in this acceptable use policy may also be superseded by provisions or notices published elsewhere on our site.

### 1.8 Severance

If any provision contained in these terms and conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect

the other provisions of this Agreement which shall remain in full force and effect.

#### 1.9 Law and Jurisdiction

This policy is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which you normally reside. You and we submit to the exclusive jurisdiction of the courts of the Commonwealth, and its states and territories.

# Fair & Safe Use Policy

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## 1 Fair & Safe Use Policy

### 1.1 Purpose

Our reasonable use policy is intended to ensure that all of our customers receive a good experience using our Services.

We may vary our reasonable usage limits and our reasonable use policy generally from time to time.

### 1.2 Excessive Usage

In the case of any Unlimited or Free usage offer excessive use is 4000 relevant units on a billing period (ie minutes or messages).

### 1.3 Unreasonable Use

Unreasonable use is where we reasonably consider the use of a Service to be:

- Fraudulent; or
- Being resold to others; or
- Unauthorised; or
- Used in relation to criminal or unlawful activities; or
- Adversely affecting other Customers.

### 1.4 Actions if Breach of Policy

If we find you have breached this policy then we will notify you of this and at our discretion we will either:

- Provide notice as a warning only; or
- Remove access from you to the relevant offer or Service; or
- Limit your Service (eg imposing a speed limit); or
- Terminate your Customer Agreement.

### 1.5 Service Specific Guidelines

Some services will have specific guidelines related to Fair and Safe Use. Please see our Service Definitions for further information. For the sake of clarity, these guidelines for our Broadband Service are outlined below.

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#### **Fair & Safe Use guidelines for iVillage Broadband**

This service is available for reasonable, general Internet use. To ensure the enjoyment and availability of our services to all our eligible members, we have a 'Fair Use Policy' to make sure everyone gets a fair-go. We have designed our products to be generous, but we do not want those generous terms abused. If we identify Excessive Use, Unreasonable Use or Unsafe Use or activity we may temporarily restrict or suspend your Service. If we do so we will endeavour to contact you via your nominated primary contact details. Certain activity may automatically be restricted as part of our Fair & Safe Use policy.

#### **Excessive Use**

Excessive use is a continuing and unreasonably disproportionate use of the service when compared to other users.

Excessive/restricted access may include (but is not limited to):

- o Access attempts to suspicious or potentially illegal content
- o Peer-to-Peer sharing
- o Total download per month in excess of THREE (3) times the average download of other users of the Service.

**Unreasonable Use**

The Service is provided to you on the basis that it is used for approved purposes. In particular you must:

- not use the Service in any manner involving illegal, malicious, deceptive or misleading activity.
- not breach any standards, content requirements or codes set out by any relevant authority or industry body.
- not use the Service in any way which interferes with the operations of the Service, anyone else's enjoyment of their Service or which upsets or offends any person.
- not use the Service for commercial purposes or in any way distribute or resell the Service without our written permission.
- obey all laws, regulations, guidelines and our reasonable instructions concerning your use of the Service

**Safe Use**

This service is provided with basic Internet security, monitoring, anti-spam and anti-malware prevention mechanisms, designed to ensure all users can enjoy the service fairly and safely.

- We do not guarantee the performance of these security measures, and recommend you also take appropriate precautions to protect your personal computing and other equipment connected to the Service, from viruses and malware.
- As a result of our Fair & Safe use policy, certain Internet sites or content may be blocked from access via this service.
- If you feel a website, or particular content, has been incorrectly restricted, you may contact our Help Desk to request its reclassification.