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ORCA Technologies Pty Ltd Updated 1st July 2024:  
Prepared by Orca Legal: [management@orcatech.co.za](mailto:management@orcatech.co.za)

## Acceptable Use Policy

### 1. Overview

The following is ORCA's Acceptable Use Policy ("AUP") for the use of ORCA's Services by Customer and its Users. The Customer hereby agrees to adhere to this AUP, and to formally communicate this AUP to users of the Customer's Services obtained from ORCA.

For the purposes of this AUP, the following terms shall have the meanings assigned to them below, namely:

- (i) "ORCA" means ORCA, Ltd and/or any of its subsidiary or affiliated companies.
- (ii) "ORCA's Services" means the provision of international fibre bandwidth capacity more fully described in the agreement entered into between ORCA and the Customer or any part thereof.
- (iii) "Customer" means the party which has entered into an agreement with ORCA and to whom ORCA's Services will be provided.
- (iv) "Customer's Services" means those services provided by the Customer to Users, utilizing the ORCA Services.
- (v) "User" means any party which uses the Customer's Services

Capitalized terms not defined herein shall have the meanings given to them in the MSA.

All Customers of ORCA must read and comply with this Acceptable Use Policy and, where such Customers provide services to their own users (e.g. resellers or downstream service providers), take all reasonable steps to ensure that their own users are aware of and comply with this Acceptable Use Policy or an acceptable use policy with terms the same or substantially similar to this Acceptable Use Policy, including, where necessary, terminating access for any such users who do not comply with the Acceptable Use Policy. Where the context requires references to "Customer" in this Acceptable Use Policy will be deemed to include the Customer's users or customers.

By using any of the Services, a Customer acknowledges that it has read, understood and agrees to comply with the Acceptable Use Policy. Customers must also ensure that the terms under which they provide services to their own users require that each such user acknowledges that they have read, understood and agreed to abide by this Acceptable Use Policy or an acceptable use policy with terms the same or substantially similar to this Acceptable Use Policy. Breaches of the Acceptable Use Policy by a user who obtains access via a Customer (e.g. resellers or downstream service providers) will also be considered to be a breach of the Acceptable Use Policy by that Customer.

Each Customer must report to ORCA by e-mail to [management@orcatech.co.za](mailto:management@orcatech.co.za) any violations of the Acceptable Use Policy promptly after first becoming aware of such violation and shall provide all reasonable assistance to ORCA to investigate and resolve any reported claims, complaints and/or problems arising out of the Services.

Customers must immediately report to ORCA by e-mail to [management@orcatech.co.za](mailto:management@orcatech.co.za) any network issue that might compromise the stability, continuity or security of the Services. Customers must co-operate with ORCA and any properly authorised law enforcement or regulatory authority or body to investigate claims of criminal, illegal or other inappropriate behaviour.

Any complaints or enquiries regarding any breach of the Acceptable Use Policy should be sent by e-mail to [management@orcatech.co.za](mailto:management@orcatech.co.za)

### **Orca Technologies (Pty) Ltd**

Reg No: 2016/537038/07

16A Unit 3, Queen Victoria Street, Stanford, 7210

Tel: 028 341 0383/5

[support@orcatech.co.za](mailto:support@orcatech.co.za) | [www.orcatech.co.za](http://www.orcatech.co.za)



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## 2. Acceptable Use

The Customer and/or a User may use ORCA's Services for any legal activity that:

- (i) complies with the provisions of this AUP and any other agreements entered into between the User and the Customer;
- (ii) complies with current good international internet practice;
- (iii) does not involve any unacceptable use or uses, as are set out below.

## 3. Unacceptable Use

The following are unacceptable uses of ORCA's Services:

- (i) the transmission, storage or distribution of any material or content where such action would violate any applicable laws including, without limitation, laws prohibiting child pornography; obscenity; discrimination (including (without limitation) racial, gender or religious slurs) and hate speech; or speech designed to incite violence or hatred, or threats to cause bodily harm.
- (ii) the creation or transmission (other than for properly supervised and lawful research purposes) of any offensive, obscene or indecent images, data or other material, or any data capable of being resolved into obscene or indecent images or material.
- (iii) the transmission, storage and distribution of any material or content where such action violates any intellectual property laws including laws concerning local and international copyright, trademarks and/or trade secrets.
- (iv) any effort to use ORCA's or Customer's Services in a way that circumvents or would circumvent the user authentication or security of any host, network or account ("cracking" or "hacking").
- (v) the forging of any TCP-IP packet header (spoofing) or any part of the header information in an email or a newsgroup posting.
- (vi) any attempt to use ORCA's or Customer's Services in a way that breaches or would breach the security of another user's account or that gains or would gain access to any other person's computer, software, or data or otherwise threaten another person's privacy, without the knowledge and consent of such person.
- (vii) any activity which threatens to disrupt ORCA's or Customer's Services through "denial of service attacks"; flooding of a network, or overloading a service or any unauthorized probes of other networks.
- (viii) any unsolicited mass mailing activity including direct marketing; spam and chain letters for commercial or other purposes, without the prior consent of the recipients of those mails.
- (ix) any failure to secure a server that is connected via ORCA's or Customer's Services to the Internet against being abused by third parties as an open relay or open proxy.
- (x) Any other use which, although not expressly mentioned herein, is similar or analogous to a specified unacceptable use.
- (xi) Any other use which ORCA, exercising its reasonable discretion, from time to time determines and notifies to the Customer in writing constitutes an unacceptable use.

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#### 4. Suspension

ORCA reserves the right to monitor usage on the Customer's Services, but is under no obligation to do so.

Should it be discovered or otherwise determined that the Customer or a User is utilizing the Customer's Services for an unacceptable use (as set out above) then, in its sole discretion, ORCA may suspend use by the Customer or that User of the Customer's Services without prior notice until such time as the unacceptable use has ceased and the User has given ORCA a written undertaking (to ORCA's satisfaction) that the User shall take all such steps as are required to ensure that such unacceptable use does not re-occur. Notwithstanding the foregoing, ORCA may take any other action which it deems appropriate against the Customer or a User for any violation hereof, which action may include (without limitation) the termination of the Customer's Services to that User, or the termination of the ORCA's Services to the Customer.

ORCA reserves the right to, where feasible, implement technical mechanisms to prevent any violation of the Acceptable Use Policy. In addition, ORCA reserves the right to charge the Customer to cover administrative costs associated with the prohibited activities of the Customer including, but not limited to, recovery of the costs of identifying offenders and removing them from or discontinuing providing them Service, in an amount (i) equal to ORCA actual expenses incurred in preventing or responding to such activity, or (ii) up to \$10000 (US Dollars), whichever is greater.

#### 5. Disclaimer

While ORCA reserves the right to edit or remove any content that it deems to be in breach of the Acceptable Use Policy or is otherwise harmful or offensive, ORCA does not intend to review, monitor or control content sent or received by Customers using the Services unless required by law and accordingly ORCA accepts no responsibility or liability to Customers or any other person for the content of any communications that are transmitted by or made available to Customers or their users, regardless of whether they originated from the ORCA Network or the Services.

In no event shall ORCA be liable to any user of its Services (Customer or end user) nor any third party for any direct, indirect, special or consequential damages for actions taken pursuant to this AUP, including, but not limited to, any lost profits, business interruption, loss of programs or other data, or otherwise.

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