

Clear Networks Internet Terms & Conditions of Use

Last updated:

21 June 2007

This is a contract between you and Clear Networks Pty. Ltd. (A.B.N. 24 418 211 265) trading as trustee for the Clear Networks Trust (ABN 24 418 211 265) It spells out the terms and conditions, which apply to your use of the Internet access services provided by Clear Networks or its Affiliates (the "Internet Service (s)") for the service plan that you have selected. These Terms and Conditions are additional to Acceptable Use Policy which can be found on Clear Networks sites (www.clearnetworks.com.au/satellite_application.html, www.clearnetworks.com.au/wireless_application.html or www.clearnetworks.com.au/neighbourhood_application.html) or otherwise made available to you. In addition, please note that your access to, use of or acceptance of a non-Australian Broadband Guarantee product, service or benefit through web sites, web pages and web services operated by Clear Networks Pty. Ltd., its affiliates or partners (the "Clear Networks Sites") may be subject to additional non- Australian Broadband Guarantee terms, policies and rules contained within the Clear Networks Sites or otherwise made available to you. By opening a Clear Networks Internet Services account under your name or by using the Clear Networks Internet Services you are agreeing to be legally bound by and abide by the terms of this Agreement. We may monitor your account to ensure that you are complying with these Terms. We will comply with our Privacy Policy (available on the Clear Networks website - <http://www.clearnetworks.com.au/privacy.html>) if we do. We may investigate any alleged misuse of the Service and may involve police or other law enforcement agencies in doing so without notice to you. We will cooperate with law enforcement agency investigations which may involve disclosures of information in response to legally binding notices. We are also obliged to allow law enforcement agencies to monitor and intercept communications using our Services. IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT SUBSCRIBE FOR, ACCESS OR USE THE CLEAR NETWORKS INTERNET SERVICES AND YOU MUST IMMEDIATELY TERMINATE YOUR CLEAR NETWORKS INTERNET SERVICES ACCOUNT.

1. Amendments To This Agreement

a. Clear Networks reserves the right to amend this Agreement at any time, where the Service is an Australian Broadband Guarantee Service the prior written approval for any change is required from the Department of Communications, Information Technology and the Arts (DCITA). Clear Networks will publish any amendments on its Web Site at <http://www.clearnetworks.com.au/> as may be updated from time to time, (the "Clear Networks Internet Services Web Site") before such amendments become effective. You are responsible for regularly reviewing the Clear Networks Internet Web Site to obtain timely notice of such amendments. If any amendment is unacceptable, you may terminate your Clear Networks Internet Services account. If you do not terminate your account before the effective date of the amendment, you will be conclusively deemed to have accepted the amendment and we will notify you by email.

2. Your Account

a. You represent and warrant that you have reached the age of majority (at least 18 years of age) in the province or territory in which you reside and that you possess the legal right and ability to enter into this Agreement and use the Clear Networks Internet Services in accordance with this Agreement.

b. As the Clear Networks Internet Services account holder, you are responsible for your account and the maintenance of all passwords related to your account. You are solely responsible and liable for any and all activities that occur under your account, including without limitation all activities of any sub-account holders. You are also responsible for maintaining the confidentiality of your account and all passwords related to your account. You agree to immediately notify Clear Networks, as specified on the Clear Networks Internet Services Web Site, of any unauthorized use of your account or any passwords related to your account or of any other breach of security and to provide assistance to Clear Networks, as requested, to stop and/or remedy any breach of security.

3. Customer Information

a. You agree to provide true, current, accurate and complete customer information as prompted by Clear Networks registration process or as otherwise requested by Clear Networks or its agents and you agree to promptly notify Clear Networks, by means specified on the Clear Networks Internet Services Web Site, of any changes to this information as required to keep it current, complete and accurate.

4. Privacy

a. Your use of our website or access to our Services will be taken to indicate your consent to our collection, use and disclosure of your personal information in accordance with our Privacy Policy, which forms part of these Terms and is available on our website. We may for example disclose information about you to or receive information about you from your credit card provider or its agents. You agree, for the purposes of the Privacy Act 1988 (the "Privacy Act"), to your Customer details being provided to DCITA and potentially other appropriate agencies for the purposes of Australian Broadband Guarantee (transitional period) Program administration, regulation and evaluation, and policy development.

5. The Spam Act

a. We comply with the Spam Act 2003 (Cth). If we send you promotional emails, you will be able to respond asking us not to send you any more. However, all of our official communication with you will be by email: notice of upgrades and outages, invoices and so on. You agree as part of your acceptance of

these terms and conditions to our sending you emails for those and related purposes.

6. Notices

a. Notices will be sent by email to the preferred email address you have nominated. You will be deemed to have received a notice at the time the email is sent.

7. Billing and Payment

a. You must pay Clear Networks the access charges and any other applicable charges as calculated in accordance with Clear Networks' Australian Broadband Guarantee (transitional period) program current rates which are set out on our website.

b. You may be required to provide a Deposit equivalent to one (1) month's service charges at the time of applying for the service. This Deposit will be credited toward your account upon Service Activation.

c. You may be charged an Installation and Setup fee. This fee will be charged on application.

d. This rate will not exceed the Australian Broadband Guarantee rate for a period of 36 months from the date of commencement of the service at the premises (together with any applicable government duties or taxes).

e. Any changes to charges during the first three years after a customer signs up will have prior approval from DCITA and will not result in an increase to the overall price of the Australian Broadband Guarantee service for three years from the commencement of the Australian Broadband Guarantee service. Customers will be notified of changes by email.

f. You accept liability for any and all use of the Service supplied to you.

g. If you are on a Volume based plan and do not fully utilise your available usage in any particular billing month, it cannot be carried over to the next month.

h. We will invoice you one month in advance until termination either on the date you commenced the service, or invoice you pro-rata for the first month and thereafter on the first day of the month to align to calendar months.

i. Service charges are invoiced monthly one month in advance. Excess Usage (where applicable) charges will be calculated and invoiced at the end of the month.

j. We will automatically charge the invoiced amount to your nominated credit card or direct bank debit account. This amount will include the monthly charges for the Service, charges for additional features on your account, and any excess charges as may be applicable for your Service.

k. We are entitled to charge your credit card or direct bank debit account, on termination, for any outstanding fees you owe us, including any applicable termination fees.

l. If your credit card is declined or your direct bank debit account has insufficient funds available, you will be charged a \$16.50 handling fee. In addition your Service may be suspended. If charges remain unpaid after 14 days, Clear Networks may, in addition to any other remedy available to it, suspend and/or terminate the service and/or charge an administration fee of \$22, and on the unpaid amount interest at the rate of 1.5% per month.

m. For account applications requiring credit, Clear Networks may give information about you to a credit reporting agency. The information may include identity particulars (name, sex, address, date of birth, drivers license number, employer), and any other relevant particulars, details of any dishonoured cheques drawn or declined/reversed transactions for \$20 or more (which have been dishonoured more than once for cheques)

n. Any Customer nominating payment by direct bank debit or credit card, Clear Network is authorized to debit monthly service charges and any other account charges which apply to the Service (plus appropriate bank charges) against or credit any payment to your nominated credit card or bank account.

o. You agree to pay all fees and charges (and applicable taxes) incurred which relate to the provision and/or use of the Clear Networks Internet Services through your account, in accordance with the rates, terms and conditions established from time to time by Clear Networks that are applicable to the service plan which you have selected.

p. All charges include GST.

q. Clear Networks shall begin charging you on the date that Clear Networks Internet Services is installed and activated ("Service Activation"), unless otherwise specified by Clear Networks. Customers will not be charged monthly fees where delay in connection, installation or service availability is no fault of the customer and that customers will not be charged more than one month's fees in advance.

8. Early Termination

a. Should you wish to terminate the service prior to Service Activation a Penalty Fee may apply as follows

i Termination prior to having a scheduled installation date will result in loss of Deposit

ii Termination prior to Installation but after an installation date will result in loss of Deposit and Loss of any Applicable Setup and Installation fee

b. Termination after Service Activation is subject to payment in full for the remainder of the applicable contract term.

c. Early Termination does not release you from any other obligation as defined in these Terms.

9. Service Limitations

a. Clear Networks Internet Services offer a variety of access speeds and service plans. All services are subject to the availability of suitable equipment and facilities and consequently all services are not available at all locations.

b. Final confirmation of service availability for Clear Networks Internet Services high speed services cannot occur until the Clear Networks Internet Services high speed equipment is installed at your premises. If such equipment is installed by a Clear Networks installer, you hereby authorize the installer to

disclose to Clear Networks the necessary information to confirm service availability for your premises.

c. It is your responsibility to ensure that your equipment and software meet the current minimum system requirements specified by Clear Networks as being necessary for access to the Clear Networks Internet Services. From time to time, the equipment and/or software required to access the Clear Networks Internet Services may change. Accordingly, your equipment and/or software may cease to be adequate to access the Clear Networks Internet Services. In such circumstances, your sole remedy is to terminate your Clear Networks Internet Services account.

d. Reverse engineering of the Clear Networks Internet Services high speed service is not permitted. This means that you cannot have a higher upload than download speed. Clear Networks does not guarantee that the Clear Networks Internet Services will operate with all equipment or software, including without limitation all Internet applications and appliances.

10. General Practices and Limits

a. You acknowledge that Clear Networks may establish general practices and limits concerning use of the Clear Networks Internet Services, including the maximum size of any e-mail message that may be sent from or received by a Clear Networks Internet Services account, the maximum disk space that will be allotted on Clear Networks' servers on your behalf, the maximum amount of data that may be sent from or received by a Clear Networks Internet Services account and the maximum number of days that e-mail messages will be stored on Clear Networks servers. All such changes will be posted on the Clear Networks Internet Services Web Site at <http://www.clearnetworks.com.au/> or otherwise made available to you. You agree to comply with all such general practices and limits. You further agree that violating such practices or exceeding such limits may result in suspension, restriction or termination of your account or the imposition of additional charges.

11. Service Installation

a. We will arrange the delivery of the Equipment purchased from us or our related bodies corporate, to your location. You must at your own expense, obtain in advance and maintain all necessary consents and approvals for the installation of the Equipment at your premises and pay for any alterations to your premises required for installation.

b. Clear Networks or our Affiliate will arrange the installation.

c. Obstructions may not be confined to your own property. Should you choose to have the Equipment positioned at a location other than the one recommended by us, you must pay any service-related charges for future adjustment.

d. The installer arranged by either us or our related body corporate will make all reasonable efforts to position or direct the Equipment to mitigate any adverse localised electrical or radio interference caused by other parties. If we cannot at the time of installation offer a satisfactory service (in our sole judgment) because of such third party interference we will not proceed with the installation.

e. The installer arranged by either us or on of our related bodies corporate may refuse to install the Equipment if the location is considered dangerous or presents undue risk to the installer or may create damage to the substrate to which the Equipment is to be attached or used to gain access to the installation location.

f. You must pay the standard installation fee:

i The standard installation configuration for Clear Networks Australian Broadband Guarantee installation only includes the installation of the high speed service to 1 stand-alone computer or non-networked server. If you wish to connect additional computers to the Internet you are responsible for installing and maintaining the necessary systems and their configurations.

ii You must provide an adequate, standard household power outlet within 1.8 meters of the location that the high speed service is to be installed.

iii You must provide a suitable location for the installation of the associated components within 1.8 meters of the computer to be used for access to Clear Networks Internet Services. The location must provide reasonable ventilation and protection from damage to, or theft or loss of the associated components.

g. Care will be taken by our installers with respect to avoiding any property damage at installation. Neither we nor our contractors accept liability for any property damage where due care has been taken.

h. On removal of the Equipment, either at your request or due to failure to observe any clause in these terms and conditions, then any need for building remediation as a direct result of antennae or satellite dish installation or removal will be your responsibility and cost.

i. Installation options available for Clear Networks Internet Services high speed service will depend upon the Customer Access Location. Not all installation options are available at all Customer Access Locations.

j. Extra charges shall apply to all services not included in Clear Networks' standard installation of an Australian Broadband Guarantee service.

k. You authorize Clear Networks, its employees, agents, contractors and representatives, to enter your premises and access your equipment and software for the purpose of installing, maintaining, inspecting, repairing or removing any equipment or software as reasonably required for the provision of the Clear Networks Internet Services. Access to your premises will be at a time that is mutually convenient for you and Clear Networks.

l. Additional charges shall apply when it is necessary for Clear Networks to install special equipment or software or to incur an unusual expense to establish the Clear Networks Internet Services.

m. All site visits will involve a minimum charge for moves, changes, rearrangements or re-installations of a high speed service, unless otherwise specified by Clear Networks
n. NOTE: a callout fee may be charged if the installer attends and cannot gain access to the premises on the nominated day. You must advise us at least 3 days prior to your installation if a change to the date of the install is required.
n. In no event will Clear Networks be responsible or liable for any claims, damages, losses or expenses, including without limitation lost wages or missed work, in the event that an installation appointment for the Clear Networks Internet Services is missed, either by Clear Networks or by any third party installer.

12. Equipment Warranty

a. Ownership of the customer premises equipment remains with Clear Networks on expiration of the contract term.
b. All equipment purchased from Clear Networks or supplied by Clear Networks as part of the installation are covered by a repair and replacement warranty against all manufacturing faults for 12 months from the date of purchase. Labour and travel charges may apply.
c. You should be aware that a Clear Networks service may be subjected to a lightning strike. You are notified that you have the option to select the use of a lightning arrester to protect your equipment. Any damage to the equipment due to lightning is your responsibility.
d. your warranty rights:
i are in addition to any non-excludable rights, conditions or warranties implied by law, including those under the Trade Practices Act 1974 (Cth); and
ii will no longer apply if your contract with us is terminated for any reason;
e. your warranty is as set out here: all other rights, conditions or warranties relating to the customer premise equipment are excluded;
f. Clear Networks reserves the right to update software in your customer premise equipment to offer additional features and functions or to improve the performance of the customer premise equipment to best match the performance of the Clear Networks network. Upgrades will be done "over the air" and you won't have to do anything but leave your customer premise equipment switched on. We will give advance notice of upgrades. You won't have to pay for them;
g. In the unlikely event that your customer premise equipment needs servicing outside the warranty period, we can arrange that for you at your cost.

13. Quality of Service

a. We will make reasonable efforts to make the Internet Service you have subscribed to available to you continuously and, if the services cease, to restore those services as soon as reasonably possible in accordance with the service restoration timeframe agreed with DCITA.
b. Subject to clause 24 of this Agreement, the Internet Service is available to you for a target of 24 hours a day (other than on a permanent connection basis) and, if the system malfunctions, we will endeavour to restore this service as soon as reasonably possible. If we are unable to provide or restore the service (even if the failure is our fault) we are not liable to you.
c. From time to time extreme weather conditions may cause loss of quality of reception. We do not accept any liability for this as it is characteristic of the current technology and frequencies used.
d. The reasons for these limits on our service levels are because we do not own or control all the facilities and communication lines necessary for access, and therefore cannot guarantee error free or uninterrupted service.

14. Customer Equipment and Software

a. The Clear Networks Internet Services high speed service must be connected to a suitable Network Information Centre ("NIC") installed at your premises. If you are supplying and installing the NIC yourself, you must install the NIC as appropriate prior to the installation of the Equipment. Alternatively, if you purchase the NIC along with installation of the NIC from Clear Networks when ordering the Clear Networks Internet Services, you must ensure that there is a suitable free NIC slot available in your computer prior to arrival of the Clear Networks installer at your premises. In all cases, Clear Networks will not remove NICs from your computer (except as required for support of NICs purchased from Clear Networks) or rearrange NICs in your computer.
b. You are required to show that your computer is functioning properly prior to Clear Networks doing any work on your computer (where applicable).
c. You agree that Clear Networks is not responsible for any damage to or loss of your data, equipment or software arising from installation or maintenance of the Clear Networks Internet Services or from other services provided at your premises. Clear Networks recommends that you back-up all existing computer files by copying them to a different storage device prior to the installation or maintenance of any Clear Networks Internet Services high speed equipment or software.
d. You acknowledge and agree that, except as otherwise explicitly stated in this Agreement, Clear Networks is not responsible for the installation, operation, maintenance or support of any equipment or software owned or used by you, including without limitation any equipment or software used in connection with the Clear Networks Internet Services.

15. Support

a. The Clear Networks Internet Services Help Desk will provide telephone assistance on a reasonable efforts basis, via the telephone number and during the hours agreed with DCITA and specified on the Clear Networks Internet Web Site. Assistance is limited to your problems using the Clear Networks Internet Services and may exclude problems related to certain

equipment and software, as specified by Clear Networks, at its discretion. Clear Networks cannot guarantee the resolution of any particular problem or Clear Networks Internet Services interruption.

16. Content Warning

a. You acknowledge that the Clear Networks Internet Services provide access to content, information and materials that are uncensored. You acknowledge that some of the content, information and material that is available through the Clear Networks Internet Services and the Internet may be inaccurate, offensive, harmful or in violation of applicable laws. Clear Networks recommends that minors using the Clear Networks Internet Services be supervised by an adult.

17. Acceptable Use of Clear Networks Internet Services

a. You agree to the Clear Networks Acceptable Usage policy outlined on the Clear Networks websites or otherwise made available to you.

18. Proprietary Rights

a. You acknowledge that content, including but not limited to text, software, music, sound, photographs, video, graphics or other material accessed through the Clear Networks Internet Services or the Internet is protected by applicable copyrights, trade-marks, patents, trade secrets and/or other proprietary rights and laws. You further acknowledge that, except where expressly stated otherwise, all programs, services, processes, designs, technologies, materials and all other things comprising the Clear Networks Internet Services are owned by Clear Networks, its licensors or its suppliers and are protected by applicable copyrights, trade-marks, patents, trade secrets and/or other proprietary rights and laws.
b. Clear Networks does not claim ownership of information, materials, software or other content (collectively, the "Content") that you post, upload, input, provide, submit or otherwise transmit to Clear Networks or any third party, using the Clear Networks Internet Services. However, you agree that by posting, uploading, inputting, providing, submitting or otherwise transmitting the Content to Clear Networks or any third party, using the Clear Networks Internet Services, you have thereby granted Clear Networks a royalty-free, non-exclusive license to use, copy, distribute, transmit, display, edit, delete, publish and translate such content to the extent reasonably required by Clear Networks to provide the Clear Networks Internet Services to its customers or to ensure adherence to or enforce the terms of this Agreement.
c. You acknowledge that, except where otherwise specified by Clear Networks, IP addresses and e-mail addresses assigned to you by Clear Networks during the term of this Agreement remain the property of Clear Networks at all times.
d. You understand that the technical processing and transmission of the Clear Networks Internet Services, including your content, materials or other information, may involve transmissions over various networks and changes to conform and adapt to technical requirements of connecting networks or devices. You further acknowledge that any content, materials or information that you may access through the Clear Networks Internet Services may be subject to "caching" at intermediate locations on the Internet.

19. Compliance Measures

a. You acknowledge that Clear Networks has no obligation to censor or monitor use of the Clear Networks Internet Services by you, any customer or any third party, including without limitation any obligation to censor or monitor any content, material or other information sent, received or accessible through the Clear Networks Internet Services or the Internet. However, you agree that Clear Networks has the right to, without notice, monitor use of the Clear Networks Internet Services and monitor, review and retain such content, material or information if Clear Networks believes in good faith that such activity is reasonably necessary to provide the Clear Networks Internet Services to customers, ensure adherence to or enforce the terms of this Agreement, comply with any laws or regulations, respond to any allegation of illegal conduct or claimed violation of third party rights, or protect itself or others.
b. In the event that Clear Networks receives a complaint relating to use of the Clear Networks Internet Services by a customer, Clear Networks may, in its sole and absolute discretion and without notice or liability, investigate the complaint, restrict, suspend or terminate the account(s) involved and/or remove any content, information or materials from its servers.
c. You agree that Clear Networks may, without notice or liability, disclose to third parties any customer information or any content, information or materials associated with a Clear Networks Internet Services account, if Clear Networks believes in good faith that such activity is reasonably necessary to provide the Clear Networks Internet Services to customers, ensure adherence to or enforce the terms of this Agreement, comply with any laws or regulations, respond to any allegation of illegal conduct or claimed violation of third party rights, or protect itself or others.

20. Australian Broadband Guarantee Minimum Service Levels

a. Clear Networks is obliged to supply the Australian Broadband Guarantee Service with the following conditions:
i. access to the Internet; receive
ii. a peak Data Speed of at least that specified in the Australian Broadband Guarantee service plan selected;
iii. average data download and upload speeds of at least 60 per cent of the peak speeds shown in accordance with the selected plan and for at least 75 per cent of the time as measured according to the prescribed Australian Broadband Guarantee testing schedule (details available from our web site <http://www.clearnetworks.com.au/>;

iv. a prepaid monthly usage allowance (download) applicable to Australian Broadband Guarantee service plan selected;
v. service availability at least 99 per cent of the time, averaged over a quarterly period;
vi. free 24 hour fault reporting via Internet, email, voicemail or fax;
vii. staffed helpdesk service Monday-Friday 8am – 7.30pm AEST
viii. customer usage information updated at least once per day;
ix. online ability to provide customer with details of usage and any associated costs;
x. connection of the service at your Premises within 6 to 8 weeks of acceptance of the contract (other than where you request or agree to a longer timeframe);
xi. restoration of service in the event of an outage for which Clear Networks is responsible within 24 hours of the outage (other than where you request or agree to a longer timeframe).

21. Australian Broadband Guarantee Services

a. You may migrate between Australian Broadband Guarantee services within the same technology platform at no penalty and are entitled to return to your original Australian Broadband Guarantee service at any time. Clear Networks may charge you an administration fee for changing your plan.
b. Clear Networks agrees to abide by Australian Broadband Guarantee performance requirements in regard to data speeds and service availability in accordance with the Australian Broadband Guarantee Guidelines.
c. Clear Networks agrees to provide you with access to a data speed testing tool. The Australian Broadband Guarantee data speed testing tool is accessible at www.bctest.com.au/speedtest.html
d. Clear Networks agrees to fully participate in the Australian Broadband Guarantee performance reporting regime for the life of the contract.
e. Clear Networks agrees to provide you with full information about the Australian Broadband Guarantee service in accordance with the Australian Broadband Guarantee Guidelines.

22. Disclaimers

a. You acknowledge and agree that:
i. All use of the Clear Networks Internet services is at your own risk;
ii. The Clear Networks Internet services are provided on an "as is" and "as available" basis;
iii. Clear Networks does not guarantee error-free or uninterrupted operation of the Clear Networks Internet services;
iv. Neither Clear Networks nor its suppliers are responsible or liable for loss, deletion or alteration of any transmissions or data, including without limitation any e-mail messages, for any material or data sent or received or not sent or received, or for any transactions entered into through or using the Clear Networks Internet services, including without limitation domain name registrations, renewals and transfers;
v. Clear Networks is not responsible or liable for any act or omission of any third party, including but not limited to any threatening, defamatory, obscene, offensive or illegal conduct or any infringement of another's rights, including without limitation intellectual property rights;
vi. Neither Clear Networks nor its suppliers are responsible for any content that is transmitted through the networks of Clear Networks or others or that is sent, received or accessed using the Clear Networks Internet services, by you or any third party; and
vii. Clear Networks is not responsible or liable for loss or damage to your equipment, software or data arising directly or indirectly out of installation or maintenance of the Clear Networks Internet services.
b. Clear Networks makes no conditions, warranties or representations about the suitability, reliability, usability, security, quality, capacity, performance, availability, timeliness or accuracy of the Clear Networks Internet services, any other products or services supplied under this agreement or the networks of third parties. Clear Networks Expressly disclaims all conditions, warranties and representations, express, implied or statutory, including but not limited to implied conditions or warranties of merchantability, fitness for a particular purpose, durability, title and non-infringement, whether arising by usage of trade, course of dealing, course of performance or otherwise.
c. The Clear Networks web site(s), which you may visit while using the Clear Networks Internet services, may contain links to other web sites. These links are provided solely as a convenience to you and the inclusion of any such link does not imply endorsement, investigation or verification by Clear Networks. Of such web sites or the information contained therein. Clear Networks is not responsible for the contents of any such web sites and makes no representations, conditions or warranties regarding any other web sites. If you decide to access other web sites, you do so at your own risk.

23. Change of plan

a. Notice in writing will be required for changes in plans - an administration fee of \$39 is charged for upgrade of speed; there is no fee for upgrade of data. Plans cannot be downgraded. Upgrades may take up to one month to process.

24. Limitation of liability

a. Notwithstanding any other provision of this agreement, in no event shall Clear Networks, its parents, subsidiaries, affiliates and their respective officers, directors, agents, employees, suppliers, resellers and distributors (collectively, the "Clear Networks Entities" and each, a "Clear Networks Entity") be liable for any direct, indirect, special, incidental, consequential or punitive damages, or any other damages or losses whatsoever, including without limitation damages for loss of profits, goodwill, opportunity, earnings, use or data, arising directly or indirectly from or related to this agreement or the

Clear Networks Internet services, regardless of the cause of action and even if one or more of the Clear Networks Entities have been advised of the possibility of such damages or losses, including but not limited to damages or losses arising from or in any way related to the following:

- b. The performance of the Internet;
- c. The content or accuracy of any material, information or data (including without limitation any software) viewed, downloaded, accessed or transmitted over or through the Internet or the Clear Networks Internet services, including without limitation material which infringes the rights of others or otherwise violates laws or regulations;
- d. The viewing, downloading, transmitting, accessing, purchasing or by any other means acquiring any information, material, product or service accessible through the Internet or the Clear Networks Internet services;
- e. Delays, errors, interruptions, mistakes, omissions, non-delivery, incorrect delivery, viruses or defects in the transmission of any information, material or data over or through Clear Networks' systems or networks or the systems or networks of third parties; and
- f. Installation or maintenance of the Clear Networks Internet services, by you, Clear Networks or third parties.
- g. Circumstances may arise in which you or another party is entitled to recover damages from one or more of the Clear Networks Entities. In such instance, the aggregate liability of the Clear Networks Entities for damages is limited to \$100.00.
- h. Some jurisdictions do not allow the disclaimer of certain warranties or conditions or the limitation of certain types of liability so some of the exclusions and limitations in this agreement may not apply to you.

25. Indemnity

a. You agree to indemnify and hold harmless each of the Clear Networks Entities from all demands, claims, awards, actions, proceedings, damages, losses, costs, charges and expenses, including legal fees, incurred by or made against the applicable Clear Networks Entity, which result from or relate to: a. access to or use, by you or any third party, of your Clear Networks Internet Services account; or b. any of your acts or omissions, including without limitation breach or non-performance of this Agreement and any violation of third party rights.

26. Term and Termination

- a. The service shall be provided by Clear Networks to you from the date of this agreement for the Access Period.
- b. The Access Period is for an initial Minimum term. Should you terminate the agreement prior to the expiry of the initial minimum term - the full contract value will be applied to your account and becomes due immediately.
- c. This agreement may be renewed (renewal) for subsequent periods of Eighteen (18) months, subject to approval by Clear Networks.
- d. Renewal of this agreement for a subsequent period may involve an adjustment to the constituent prices within the pricing of your Australian Broadband Guarantee Service, however, the price will not exceed the total price for your Australian Broadband Guarantee Service as registered with DCITA.
- e. Clear Networks may, in its sole discretion, suspend, restrict or terminate your Clear Networks Internet Services account, effective at any time, without notice to you because:
 - i the operation or efficiency of the Clear Networks Internet Services are impaired by the use of the Clear Networks Internet Services from your account;
 - ii any amount owed by you to Clear Networks;
 - iii Clear Networks has received a third party complaint which relates to the use or misuse of the Clear Networks Internet Services from your account; or
 - iv you have been or are in breach of any term or condition of this Agreement.
- f. In the event that your Clear Networks Internet Services account is suspended, restricted or terminated, additional reconnection charges may apply.
- g. Clear Networks shall have no responsibility to notify any third party, including any third party providers of services, merchandise or information, of any suspension, restriction or termination of your account. In the event your account is suspended, restricted or terminated, Clear Networks shall have no obligation to forward any unread or unsent messages to you or any third party or to maintain any messages, information or other content related to your account and you acknowledge that all such messages, information and content may be immediately deleted. Without limiting the generality of the foregoing, you acknowledge that upon suspension, restriction or termination of your account, all e-mail addresses related to your account may be immediately deleted and/or reassigned to other customers.
- h. Any termination of your account shall not relieve you from any amounts owing or other liability accruing under this Agreement prior to the time that such termination becomes effective.
- i. You agree to return any Clear Networks owned equipment and associated components to a Clear Networks approved depot within 14 days of termination of a Clear Networks Internet Services high speed service account, unless otherwise directed by Clear Networks. If you do not return such equipment in accordance with the foregoing, if such equipment is returned damaged, or if you have assigned, encumbered, sold, transferred or leased such equipment, you agree to pay a \$750.00 charge, plus applicable taxes.

27. General

- a. This Agreement, including any and all documents, web sites, rules, terms and policies referenced herein, constitutes the entire agreement between Clear Networks and you with respect to the matters referred to in this Agreement and supersedes all

prior and contemporaneous agreements and understandings, whether electronic, oral or written, between Clear Networks and you with respect to such matters.

- b. The failure of Clear Networks to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between you and Clear Networks nor trade practice shall act to modify any provision of this Agreement.
- c. In the event that any portion of this Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intention of you and Clear Networks, and the remainder of this Agreement shall remain in full force and effect.
- d. This Contract shall be governed and interpreted according to the laws of Victoria and the parties agree to submit to the non-exclusive jurisdiction of the courts of Victoria
- e. Any cause of action you may have with respect to this Agreement or the Clear Networks Internet Services must be commenced within 1 year after the claim or cause of action arose, or it shall be barred.
- f. All references to Clear Networks web site addresses in this Agreement shall also include any successor or replacement web sites containing substantially similar information as the referenced web site(s).
- g. Clear Networks may at any time assign its rights and obligations under this Agreement, in whole or in part, without notice to you. You may assign this Agreement upon written confirmation; such agreement will not be unreasonably withheld.
- h. This Agreement will endure to the benefit of and bind you and Clear Networks and our respective personal and legal representatives, successors and permitted assigns.
- i. The rights, powers and remedies of Clear Networks in this Agreement, including without limitation the right to suspend, restrict or terminate any Clear Networks Internet Services account, are cumulative and in addition to and not in substitution for any right, power or remedy that may be available to Clear Networks at law or in equity.
- j. The following provisions shall survive termination of this Agreement: Sections 7, 16, 17, 18-21, 23, 24 and any other provisions that by their meaning are intended to survive termination of this Agreement.
- k. You agree that no joint venture, partnership, employment or agency relationship exists between Clear Networks and you as a result of this Agreement or use of the Clear Networks Internet Services.
- l. The section headings in this Agreement are for convenience only and have no legal or contractual effect.
- m. Clear Networks and you acknowledge and agree that:
 - i. the charges for, and availability of, the Clear Networks Internet Services are in no way contingent or conditional on your subscription for the provision of any tariffed or tariffable service from a Clear Networks affiliate; and
 - ii. non-forborne telecommunications services, and bundled services that include non-forborne telecommunications services, are required to be provided, and shall only be provided, in accordance with tariffs approved by the Australian Communications Authority (ACA). Tariffs applicable to the Clear Networks Internet Services include the following: None (the Clear Networks Internet Services are either non-regulated or forborne).
- 28. Force Majeure**
 - a. If we cannot perform our obligations under this Agreement by reason of act of God, inclement weather, act of State, riot, strike, boycott, embargo or any other circumstances beyond our reasonable control, we will not be liable to you and will endeavour to advise you of the existence of the circumstances and their expected duration. The performance of this Agreement will, to the extent that it is made impossible by such circumstances, be suspended until such circumstances cease to prevail.
- 29. Inconsistency**
 - a. To the extent that there is any inconsistency between these terms and conditions and the terms and conditions of the Australian Broadband Guarantee program, the Australian Broadband Guarantee program terms and conditions will prevail.
- 30. Travel costs**

Additional installation travel costs may be charged at \$1.40 per km. You will be provided with a quote for additional travel costs by Clear Networks when you apply for the service (or at some other suitable time before you incur any fees). If you do not agree to pay the additional travel costs for installation Clear Networks can decide not to supply you with a service.
- 31. Definitions**
 - a. "Equipment" means: For Satellite services – Satellite Dish, PCI card, LNB and Mounts; (No cabling provided). For wireless services – Subscriber Unit, Reflector (if installed) power supply, surge protector and associated components.
 - b. "Australian Broadband Guarantee" means the Australian Broadband Guarantee program as managed by Department of Communications Information Technology and the Arts (DCITA).
- 11. Acceptable Use Policy**

Please indicate your acceptance of the Acceptable Use Policy shown below by checking the box provided.

Last updated 5 April 2007
- I. INTRODUCTION**
 - A. This Acceptable Use Policy applies to your use of the Clear Networks broadband Service ('the Service').
 - B. This Acceptable Use Policy forms part of your agreement with us for the Service.

C. We may change this Acceptable Use Policy with prior approval from DCITA as set out in the Terms and Conditions for the Service.

II. GENERAL OBLIGATIONS

- A. You must use the Service in a responsible manner, taking into account the effects your use of the Service may have on other users and the network.
- B. You must not use the Service, or allow anyone else to use the Service:
 1. for any unlawful, illegal, malicious or improper purpose;
 2. to knowingly transmit a computer virus or other malicious computer program;
 3. in any way which interferes with its availability for other users or otherwise interferes in the proper operation of the Service;
 4. to access or damage another's computer system without permission;
 5. to infringe others' intellectual property rights;
 6. to disclose private or confidential information of another;
 7. to engage in misleading or deceptive marketing practices, or to conduct, or as part of, a business that is illegal;
 8. to store, publish, display, distribute or post material that is obscene, offensive, defamatory, abusive or that violates any law or regulation;
 9. to enable a minor to access material inappropriate for a minor;
 10. to harass or menace any person;
 11. to conduct or promote a business that is illegal;
 12. to breach any laws or infringe any third party rights (including without limitation, copyright) or to breach any standards, content requirements or codes promulgated by any relevant authority or industry body; or
 13. to attempt to do any of the foregoing.
- C. If your use (including sending and receiving in the case of the broadband Services) in our reasonable opinion creates an undue burden to our network or degrades use of the network by other users, then we reserve the right to restrict the level or suspend your access to the Service, without prior notice to you.
- D. You must not use automated programs (such as peer-to-peer and file-sharing applications) to continually send or receive high volumes of data via the Service.
- E. You may connect a local area network to the Service.
- F. You must not resell the Service or any of its components or content provided via the Service.
- G. While using the Service, you must not impersonate another person.

III. EMAIL

- A. In addition, in relation to email, you must not use the Service to:
 1. send bulk unsolicited email to others;
 2. send email that hides or obscures the source of the email you send, that contains invalid or forged headers or domain names or deceptive addressing;
 3. receive responses from bulk unsolicited email where the original was distributed by you, even if not via the Service;
 4. relay email from a third party's mail server without permission;
 5. collect or harvest screen names or email addresses of others for the purpose of sending unsolicited emails or for exchange;
 6. send large or numerous emails with the purpose of disrupting another's computer or account;
 7. send email that may damage or affect the performance of the email recipient's computer; or
 8. persistently send email without reasonable cause or for the purpose of causing annoyance, inconvenience or needless anxiety to any person.

IV. NEWSGROUPS

- A. In addition, in relation to Usenet newsgroups, you must not use the Service to:
 1. engage in mass posting of messages or the posting of messages to inappropriate newsgroups;
 2. post advertisements other than in newsgroups that specifically encourage or permit advertising;
 3. post binary files other than in newsgroups that specifically encourage or permit such postings;
 4. post large or numerous messages with the purpose of disrupting a newsgroup; or
 5. send messages that contain invalid or forged headers or domain names or deceptive addressing.
 - B. What constitutes appropriate Usenet newsgroups and appropriate advertising venues will be determined by us.
- #### **V. FLAT RATE PLANS**
- A. This clause V only applies if you are on a flat rate plan.
 - B. There may be a fixed download limit, at which point your connection may be 'shaped' to a lower speed which ensures the network does not degrade. This download limit is specified in your plan description and contract of sale. For customers on (formerly) RBBS plans, the Australian Broadband Guarantee approved download limit is 5Gb for all plans.

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