

## Clear Networks Terms of Agreement

---

<b>Service Type</b>	<b>Fibre to the Home (Residential)</b>
<b>Updated</b>	<b>1<sup>st</sup> July 2012</b>
<b>Version</b>	<b>1.1</b>

---

### Table of Contents

Clear Networks Terms of Agreement.....	1
Table of Contents.....	1
1. Definitions.....	2
2. Introduction.....	2
3. Amendments to this Agreement.....	3
4. Your Account.....	3
5. Customer Information.....	3
6. Disclosure of your Personal Information.....	3
7. The Spam Act.....	4
8. Notices.....	4
9. Installation.....	4
10. Installation Charges.....	5
11. Customer Equipment and Software.....	6
12. Equipment Warranty.....	6
13. Billing and Payment.....	7
14. Change of plan.....	8
15. Other Charges.....	8
16. Ancillary Charges.....	9
17. Churn.....	9
18. Term and Termination.....	9
19. Early Termination.....	10
20. Fibre to the Home (FTTH) speeds.....	11
21. Quality of Service.....	11
22. Minimum Service Levels.....	11
23. Support.....	12
24. Service Limitations.....	12
25. Your warranty rights:.....	13
26. General Practices and Limits.....	13
27. Content Warning.....	13
28. Acceptable Use of Clear Networks Internet Services.....	13
29. Proprietary Rights.....	14
30. Compliance Measures.....	14
31. Disclaimers.....	15
32. Limitation of liability.....	16
33. Indemnity.....	16
34. Complaints.....	16
35. Force Majeure.....	17
36. General.....	17

## 1. Definitions

**"Equipment"** means: For Fibre to the Home Broadband services – Network Termination Device (NTD), Power supply Unit (PSU), ONT – Outdoor Network Terminal, PCI card, (No cabling provided).

**"Initial Minimum Term"** means a period of 12 months unless specified differently on your application form.

**"Ongoing Term"** means the term for which your service will be renewed after the Initial Minimum Term and is for a period of 12 months.

**"Network Termination Device "** or ("NTD") means the equipment that will be installed at your Premises.

**"Peak"** and **"Off-Peak"** periods mean the period of time that your Service measures usage. Your plan may have an allocation usage for one or both periods.

**"Plan Fee"** means the monthly fee that is applicable for this service.

**"Premises"** means the location where you intend to use the Service. We can only deliver the Service to homes that are within the specified Fibre Estate locations. We will deliver your Service to the network boundary point of that Premises, which is defined as the Network Termination Device. Cabling from the network boundary point to the location where you intend to use the Service is your responsibility and you may incur charges for any installation, repair or any other work required in relation to any such cabling

**"Service", "Services"** means the telecommunications services supplied to you as part of this Agreement

**"TIO"** means the Telecommunications Industry Ombudsman

**"US", "Clear", "Clear Networks"** means Clear Networks Pty. Ltd.

**"You", "Your"** means the customer applying for the Service.

## 2. Introduction

- 2.1. This is a contract between you and Clear Networks Pty. Ltd. (A.B.N. 24 418 211 265).
- 2.2. The Terms and conditions, apply to your use of the Internet access services provided by Clear Networks or its Affiliates (the "Internet Service (s)"), for the particular service plan which you have selected. These Terms and Conditions are additional to the Acceptable Use Policy which can be found on Clear Networks website 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.
- 2.3. 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> ). 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.**

### **3. Amendments to this Agreement**

- 3.1. Clear Networks reserves the right to amend this Agreement at anytime. Clear Networks will publish any amendments on its Website at <http://www.clearnetworks.com.au/residential/terms-and-conditions> at least 14 days before such amendments become effective.
- 3.2. You are responsible for regularly reviewing the Clear Networks Internet Website to obtain timely notice of such amendments. If any amendment is unacceptable, you may terminate your Clear Networks Internet Services account if Clear Networks is unable to offer the original services contracted. If you do not terminate your account before the effective date of the amendment, you will be conclusively deemed to have accepted the amendment.

### **4. Your Account**

- 4.1. You represent and warrant that you have reached the age of maturity (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.
- 4.2. 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 Website, 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.

### **5. Customer Information**

- 5.1. 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 Website, of any changes to this information as required to keep it current, complete and accurate.

### **6. Disclosure of your Personal Information**

- 6.1. 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 can be viewed at - <http://www.clearnetworks.com.au/privacy> , and 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 the Fibre Operator and its suppliers, for the purpose of an installation being performed under this Agreement.

## 7. The Spam Act

- 7.1. 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 anymore. However, all of our official communication with you will be by email, including notice of upgrades, 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.

## 8. Notices

- 8.1. Notices will be sent by email to either your ClearMail or the preferred email address you have nominated. You will be deemed to have received a notice at the time the email is sent. You are responsible for informing Clear Networks of any change to your preferred email address. This can be done by logging into MyClear at <https://myclear.clearnetworks.com.au/>.

## 9. Installation

- 9.1. Clear or its subcontractors will be responsible for delivering and installing the Network Termination Device (NTD) at your premises for a standard installation.
- 9.2. The 'Standard Installation' covers the following items:
- (a) install a new optical lead-in to the existing lead-in pipe to wall box;
  - (b) supply and install a new optical fibre wall box which, generally, will replace the existing copper wall box;
  - (c) supply and install fibre lateral cable from the fibre wall box to the fibre wall plate using wall and roof cavities where accessible (for example, a single storey house with a tile roof) plus external conduit where required;
  - (d) supply the PSU (as ordered by the Customer); and
  - (e) supply and install the cable between an outdoor ONT and the PSU.

A Standard Installation does not include:

- (a) boring where equipment cannot be used safely;
- (b) cutting of a concrete driveway (or other hard surface) and reinstatement;
- (c) the lifting of a metal roof;
- (d) the installation of a wall plate outside a 50m radius of the fibre wall box;
- (e) the installation of a PSU more than 1 metre away from a suitable power outlet;
- (f) the installation of an ONT more than 1 metre away from the PSU;
- (g) the installation of a PSU 25 metres or more from an outdoor ONT;
- (h) any internal telephone and fixed data cabling;
- (i) trenching to house underground cabling at the End User Premises;
- (j) the erection of poles including any required clearing, digging and reinstatement of land;
- (k) cabling where the point where the ONT is installed at the End User Premises is more than 20 metres (radial distance) from the point where the lead-in cable meets the building at the End User Premises;

- (l) cabling from a fixed termination point to a moveable structure;
  - (m) cabling across, through or under a body of water or tidal land to an isolated mooring structure, a buoy, a bollard or a vessel;
  - (n) clearing, digging and reinstatement of land required to install the lead-in cable along the chosen route on the End User Premises; or
  - (o) any additional cabling or equipment required to reduce, eliminate or avoid a site hazard (such as a high voltage substation, a hazardous area or explosive atmosphere).
- 9.3. Installation of the Optical Network Termination Unit
- (a) You will need to provide an internal domestic AC 240V socket-outlet for the Power Supply Unit. This socket outlet must be between 350 mm and 1700 mm from the floor and which must be within a radial distance of 25 metres of the Power Supply Unit.
  - (b) If the above cannot be achieved with an existing socket-outlet, you agree to arrange and pay for a licensed electrician to install a new socket-outlet.
  - (c) The Optical Network Termination device, power supply and power supply cabling remain at all times the property of Clear or the Fibre Operator. Replacement charges may be applied if you damage or remove this equipment.
- 9.4. If you wish to connect additional computers to the Internet you are responsible for installing and maintaining the necessary systems and their configurations. Clear Networks will not support internal networks whether wired or wireless.
- 9.5. Care will be taken by 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.
- 9.6. 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.
- 9.7. 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.

## 10. Installation Charges

- 10.1. The Fibre operator installer is responsible for charges relating to installation for Standard Installations. The charge for installation will depend on the following
- (a) Whether the home is already cabled and an ONT installed at your premises
  - (b) If you are churning from an existing service.
  - (c) Which estate you are in. Different estates have different installation charges. This is due to arrangements between the Fibre operator and the developer and is not controlled by Clear.
- 10.2. As part of the order process Clear will determine whether the installation is a Standard Installation or a Non-Standard Installation and what charges will apply. If a Non-Standard Installation is required, additional charges may be required and will be quoted to you prior to proceeding.
- 10.3. If you miss an appointment once the installation staff are deployed you may incur a \$180.00 fee which will be debited to your account at the time this occurs.

- 10.4. 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.

## 11. Customer Equipment and Software

- 11.1. 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 Internet Services equipment or software.
- 11.2. 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.
- 11.3. Appropriate customer equipment must be purchased, maintained and operated by the customer, and remains the property of the customer beyond the termination of any Service agreement with Clear. All customer equipment must be approved for connection to Australian telecommunications networks.
- 11.4. You need to provide equipment to access the service/s. For the broadband Internet Service, you will need an Ethernet Router ('Home Gateway'). Direct connection of any other device (such as a PC) to the Ethernet interface on the Optical Network Termination unit is not permitted. Clear recommend, sell and support certain Ethernet Routers and other equipment suitable for the Service. We do not offer technical support for any other type of Ethernet Router than the one supplied by Clear Networks.
- 11.5. Please note that ADSL Routers are unsuitable for this purpose.
- 11.6. For the telephone Service, you need to provide
- i. an analogue telephone handset that is compliant with Australian standards. This can be connected to the ONT Voice Port.
  - ii. A voip handset, this can be connected to your router.

## 12. Equipment Warranty

- 12.1. Ownership of the customer premises equipment remains with Fibre operator for the term of the agreement.
- 12.2. In the event of service failure, Clear will provide timely and appropriate servicing of NTD for the life of the contract. All attempts to restore the service will be made within 2 business day. During this period you will not be charged call out fees or repair charges (and any associated labour charges) unless the initial installation was classified as 'non standard installation' Charges will be quoted to you for all non standard installation prior to proceeding.
- 12.3. If the service call determines the fault is related to a computer or compatibility issue, you the customer will be responsible for all related service call fees and charges which will be charged to your account on the next billing date.
- 12.4. Equipment purchased from Clear Networks has a standard manufacturer's warranty of 12 months. You will need to register your equipment and deal with the manufacturer for any warranty claims.

## 13. Billing and Payment

- 13.1. At the time of application your nominated account will be debited for the first month's Plan Fee, installation and any upfront charges relating to purchase of equipment. An invoice for this amount will be sent to your nominated email address and will be available via your MyClear account (<https://myclear.clearnetworks.com.au/>) which can be accessed after you have been installed.
- 13.2. You must pay Clear Networks the access charges and any other applicable charges as calculated in accordance with Clear Networks' which are set out on our website and detailed in these terms.
- 13.3. An administration fee of \$2.50 will be charged to customers that choose to pay via cheque or money order. The invoice will not be deemed to have been paid until the funds are cleared.
- 13.4. You accept liability for any and all use of the Service supplied to you.
- 13.5. If you are on a capped plan, you will be able to utilise the data usage of your plan during the billing period.
  - i. Your billing period will be from the 1st of the Month until the end of the Month.
  - ii. your usage is measured during Peak and Off-Peak periods separately. Your usage accumulates during both periods, and when you exceed your total allocated usage during that period your speed will be shaped to 128 kbps up and down.
  - iii. Any additional usage whilst you are shaped, will be added to your non-shaped period.
  - iv. You will be able to continue downloading and uploading without paying excess charges.
  - v. You will be able to purchase additional data-blocks which expire during the month they are purchased. Purchasing a data-block will lift your speed restriction if the cumulative data block purchased exceeds the data downloaded during the current billing period.
  - vi. There will be an option to choose a plan with no shaping of speed, and any excess usage will be charged to you at a rate of 2 cents per MB (\$20 per GB)
- 13.6. 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. Service charges are invoiced monthly one month in advance. 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.
- 13.7. 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.
- 13.8. 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 charge interest at the rate of 1.5% per month.
- 13.9. Unpaid accounts may also be referred to a debt collection agency. The full costs associated with collecting the debt will be charged to you. In addition, where you have outstanding



fees and upon us failing to reach an agreement with you in respect of your outstanding debt, your credit rating may be affected.

- 13.10. 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). You acknowledge and agree for Clear Networks to
- a) Give information to a credit reporting agency
  - b) Obtain information about You from a business (where applicable) about Your credit worthiness for the purpose of assessing Your application
  - c) Obtain consumer credit report from a credit reporting agency for the purpose of assessing Your application for commercial credit
  - d) Exchange information with credit providers for the following purposes
    - i. To assess an application by You for credit;
    - ii. To notify other credit providers of a default by You;
    - iii. To exchange information with other credit providers as to status of a default;
    - iv. To assess Your credit worthiness.
  - e) You understand that the information exchanged can include anything about Your credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.
  - f) This provision continues until any credit covered by Clear Networks ceases.
- 13.11. 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.
- 13.12. 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.
- 13.13. All charges include GST.

## 14. Change of plan

- 14.1. There is no fee for upgrade of data or to change plans. Plans cannot be downgraded. Generally plan changes take up to 5 days to process. Plan changes are limited to one per month.

## 15. Other Charges

- 15.1. Your service may require maintenance or non-standard installation, which may be charged to you. The following outlines the cost of such charges and how they would be incurred:

### Non-Standard Installation

- 15.2. Where a Non-Standard Installation is deemed necessary, additional costs may apply for onsite works such as, but not limited to:
- 15.3. Fencing, trenching, cement footings, asbestos removal, lifting cranes and scaffolding



- 15.4. Additional time and travel charges where additional time is necessary – this will be charged at a rate of \$90 per hour.

## 16. Ancillary Charges

These are charges that may occur where there is maintenance, additional support or issues caused by you.

### 16.1. Maintenance charges

Item	Charge	Travel Related Charges
On-site Maintenance Call out	\$0	No Travel Charges
On-Site Survey	\$0	No Travel Charges
Service Plan Change	\$0	No Travel Charges
Service Activation on existing equipment	\$50	No Travel Charges
On-Site Maintenance Call Out (Customer fault)	\$180	travel charges may apply
Late Cancellation (field staff deployed)	\$180	travel charges may apply
Missed Appointment Fee	\$180	travel charges may apply
Repairs to Equipment caused by Customer	Time and Materials	travel charges may apply
Removal of Equipment	Time and Materials	travel charges may apply
Rearrangement (including relocation) or modification of an existing service	Time and Materials	travel charges may apply

### 16.2. Travel Charges

Item	Charge
Road Travel surcharge beyond 100km from Field Staff Depot	\$3.50 per km

- 16.3. Your account will be debited at the time of submission of your application for the Plan Fee for the first month and any equipment you have ordered from us.
- 16.4. If the equipment (NTD) is positioned at a location other than the one recommended by us, you must pay any service-related charges for future adjustment including but not limited to service call fees, labour and travel charges.

## 17. Churn

- 17.1. If you wish to Churn from another provider, you can do so without charge by Clear. You may be liable for any termination charges with your current provider.
- 17.2. Timings of Churns are not in the full control of Clear, and we will not be liable for any delays or interruptions of service associated with a churn.

## 18. Term and Termination

- 18.1. The service shall be provided by Clear Networks to you from the date of this agreement for the Access Period.
- 18.2. 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.

- 18.3. This agreement may be renewed (renewal) for subsequent periods, subject to approval by Clear Networks.
- 18.4. At the end of your contracted period your contract will automatically renew for an Ongoing Term which will be for a period of 12 months unless otherwise specified. All terms in this agreement will still apply.
- 18.5. You may cancel this Agreement in whole or in part by giving us at least thirty (30) Days' notice in writing specifying a Cancellation Date. This cancellation must not be within 30 days of service activation. Your service will be cancelled 30 days after we confirm in writing that we have received your cancellation request. You will be invoiced for all outstanding amounts which includes full payment of contract term (if applicable) and any other relevant charges. This will be debited from your nominated account on the date of cancellation.
- 18.6. 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:
  - a) The operation or efficiency of the Clear Networks Internet Services are impaired by the use of the Clear Networks Internet Services from your account;
  - b) There are amounts owed by you to Clear Networks;
  - c) 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
  - d) You have been or are in breach of any term or condition of this Agreement.
- 18.7. In the event that your Clear Networks Internet Services account is suspended, restricted or terminated, additional reconnection charges may apply.
- 18.8. 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.
- 18.9. 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.

## 19. Early Termination

- 19.1. If you cancel your application or miss an appointment once the installation staff are deployed you will incur a \$180.00 fee which will be debited to your account at the time this occurs.
- 19.2. Termination after Service Activation is subject to payment in full for the remainder of the applicable contract term, unless specified within this agreement. The Minimum Term of this Agreement is 12 months.
- 19.3. Early Termination does not release you from any other obligation as defined in these Terms.
- 19.4. All requests for cancellations are to be sent in writing to Clear Networks – [accounts@clearnetworks.com.au](mailto:accounts@clearnetworks.com.au) . Clear Networks will contact you to confirm the date of cancellation of your service.

- 19.5. We may cancel your application if we reasonably determine that it is not technically or not operationally feasible to supply or continue to supply the service to you. We will notify you at the earliest opportunity if this is the case. Where a service is operational we will give you 30 days notice of termination.

## 20. Fibre to the Home (FTTH) speeds

- 20.1. Any transmission speeds referred to by Clear for the broadband Internet service refer to the maximum theoretical throughput speed achievable with the service under ideal conditions. You acknowledge that the actual achieved speeds may be substantially lower than the theoretical speeds for a variety of reasons. These reasons include, but are not limited to:
- a) The configuration and type of the copper wiring within your premises (it is recommended that Cat5e/Cat6 structured cabling is used throughout).
  - b) The TCP/IP protocol stack and application software configuration on your computer (including but not limited to TCP Window Size configuration).
  - c) The customer's broadband equipment, including the capacity of its CPU to keep up with the peak data flow rates offered by the broadband service and a wireless connection not being able to transmit at the same speeds as the Fibre interface speed.
  - d) The capacity of, load on, and available throughput rate of the remote host the customer is accessing.
  - e) The presence of service faults or network link congestion at any point in the end-to-end path between a remote host and the customer's system.

## 21. Quality of Service

- 21.1. 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 possible.
- 21.2. Subject to clause 21 of this Agreement, the Internet Service is available to you for a target of 99.9% (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.
- 21.3. 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.

## 22. Minimum Service Levels

Clear Networks supply the Internet Service with the following conditions:

- 22.1. Service availability at least 99.9 per cent of the time, averaged over a quarterly period;
- 22.2. Free 24 hour fault reporting via Internet, email or fax;
- 22.3. Staffed helpdesk service Monday-Friday 9.00am – 5:30pmAEST; closed on weekends and all national public holidays
- 22.4. Where discounted bonus data is offered during an off peak period either as part of your contracted service or as a complimentary service. Refer to Clear Networks website for the current off peak data times.

- 22.5. The Plan Fee applies to the standard plan features. Where services are offered free of charge, Clear Networks reserves the right to withdraw these services without notice or compensation to the customer;
- 22.6. A courtesy email will be sent to either your clearmail or preferred email account to notify you that you are close to utilising your full data allocation. This is a complimentary service and should not be relied upon. It is the customer's responsibility to regularly check their monthly usage at [www.myclear.clearnetworks.com.au](http://www.myclear.clearnetworks.com.au)
- 22.7. Customer usage information updated at least once per day and shown at [www.myclear.clearnetworks.com.au](http://www.myclear.clearnetworks.com.au)
- 22.8. Clear Networks reserves the right to withdraw these services without notice or compensation to the customer.

## 23. Support

- 23.1. The Clear Networks Internet Services Help Desk will provide telephone assistance on a reasonable efforts basis, via the telephone number and during the hours specified on the Clear Networks Internet Website. 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.
- 23.2. Customers are required to participate in the Clear Networks trouble shooting process in order to correct their reported issue. A copy of this is available from [www.clearnetworks.com.au/](http://www.clearnetworks.com.au/) . Customers may be directed to send their supplied equipment (where practical) to Clear Networks for diagnosis. In this event, you will be credited for the time your service is compromised, from the time Clear Networks confirms the service is compromised, until the service is restored. If you fail or refuse to participate in the Clear Networks troubleshooting process Clear Networks may, at its sole and absolute discretion and without notice or liability, suspend or terminate the account(s) involved.
- 23.3. 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.

## 24. Service Limitations

- 24.1. 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.
- 24.2. Final confirmation of service availability for Clear Networks Internet Services high speed services cannot occur until the NTD equipment is installed at your premises. You hereby authorize the installer to disclose to Clear Networks the necessary information to confirm service availability for your premises.
- 24.3. 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 Internet Services account.

- 24.4. 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 services will operate with all equipment or software, including without limitation all Internet applications and appliances.

## 25. Your warranty rights:

- 25.1. Are in addition to any non-excludable rights, conditions or warranties implied by law, including those under the Trade Practices Act 1974 (Cth); and
- 25.2. Will no longer apply if your contract with us is terminated for any reason;
- 25.3. Your warranty is as set out here: all other rights, conditions or warranties relating to the customer premise equipment are excluded;
- 25.4. Clear Networks and its contractors 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.

## 26. General Practices and Limits

- 26.1. 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.

## 27. Content Warning

- 27.1. 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.

## 28. Acceptable Use of Clear Networks Internet Services

- 28.1. You agree to the Clear Networks Acceptable Usage policy outlined on the Clear Networks websites at <http://cleARNetworks.com.au/internet/terms-and-conditions> or otherwise made available to you.

## 29. Proprietary Rights

- 29.1. 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.
- 29.2. 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.
- 29.3. 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.
- 29.4. 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.

## 30. Compliance Measures

- 30.1. 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.
- 30.2. 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.

- 30.3. 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.

## 31. Disclaimers

You acknowledge and agree that:

- 31.1. All use of the Clear Networks Internet services is at your own risk;
- 31.2. The Clear Networks Internet services are provided on an "as is" and "as available" basis;
- 31.3. Clear Networks does not guarantee error-free or uninterrupted operation of the Clear Networks Internet services;
- 31.4. 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;
- 31.5. 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;
- 31.6. 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
- 31.7. 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.
- 31.8. 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, and course of performance or otherwise.
- 31.9. 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.



## 32. Limitation of liability

- 32.1. 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:
  - 32.2. The performance of the Internet;
  - 32.3. 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;
  - 32.4. 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;
  - 32.5. 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
  - 32.6. Installation or maintenance of the Clear Networks Internet services, by you, Clear Networks or third parties.
- 32.7. 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.
- 32.8. 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.

## 33. Indemnity

- 33.1. 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:
  - 33.2. Access to or use, by you or any third party, of your Clear Networks Internet Services account; or
  - 33.3. Any of your acts or omissions, including without limitation breach or non-performance of this Agreement and any violation of third party rights.

## 34. Complaints

- 34.1. Our complaints handling process is located on our website [www.cleARNetworks.com.au](http://www.cleARNetworks.com.au) . You have an obligation to comply with this document in the first instance for all disputes and complaints. In the event we are not able to resolve your complaint or dispute to your

satisfaction you may have rights under the Telecommunications Industry Ombudsman (TIO) Scheme, for further information go to [www.tio.com.au](http://www.tio.com.au).

- 34.2. We may charge a reasonable complaint handling fee, but will only impose such a fee in limited circumstances. For example, if you do not comply with Clear Networks complaint handling procedure or technical advice. This fee will be invoiced to you at completion of the investigation of your complaint if it is determined it cannot reasonably be the fault of Clear Networks. ,

## 35. Force Majeure

- 35.1. 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.

## 36. General

- 36.1. This Agreement, including any and all documents, websites, 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.
- 36.2. 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.
- 36.3. 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.
- 36.4. 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.
- 36.5. Any cause of action you may have with respect to this Agreement or the Clear Networks Internet Services must be commenced within 6 months after the claim or cause of action arose, or you agree for it to be barred.
- 36.6. 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).
- 36.7. 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.
- 36.8. 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.
- 36.9. 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.

- 36.10. 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.
- 36.11. 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.
- 36.12. The section headings in this Agreement are for convenience only and have no legal or contractual effect.
- 36.13. Clear Networks and you acknowledge and agree that 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 tariff or tariffable service from a Clear Networks affiliate.