

ClearTalk Terms

Clear Talk Terms and Conditions

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Important - Please read carefully:

Welcome!

These Terms of Service constitute the agreement between Clear Networks and you, the customer, for the use of the Service and, if applicable, the Device.

By providing us with your payment details you:

- (a) acknowledge that you are entering into a legally binding contract with Clear Networks; and
- (b) agree to these Terms of Service.

These Terms of Service apply in addition to the Software Terms and Conditions applicable to the Service (if any). If there is any inconsistency between these Terms of Service and the applicable Software Terms and Conditions, these Terms of Service prevail to the extent of the inconsistency.

Emergency services - 000 dialling (Australian Residents)

You acknowledge that the Service does NOT support some parts of the 000 emergency services. Clear Networks does offer access to some 000 services, but 000 dialling is different in a number of important ways. Please see clause 6 below.

You should always have an alternative means to call 000 emergency services.

Emergency services - Police, Fire and Ambulance (International Residents)

You acknowledge that the Service does NOT support emergency services dialling (eg, police, fire, hospital and ambulance emergency services) in any country other than Australia.

You should always have an alternative means to call emergency services.

(Some words used in this section are defined in clause 1 below.)

Recommended Broadband Service when using ClearTalk

The ClearTalk service requires a minimum broadband speed of 256/64 to operate and provide optimum performance and quality. Clear Networks recommends connection speeds of 512/128 or higher. As Voice over IP (VoIP) uses your broadband internet connection to pass the voice traffic to conventional phone lines, it will contribute to uploads and downloads of your internet service. Customers should check their broadband service plans and ensure that they have

sufficient download to accommodate this service.

You acknowledge that although Clear Networks will take all reasonable steps to make sure you receive the voice and data service within the calling areas, the voice and data service is not free from faults or interruptions. Certain factors, such as network congestion, maintenance, technical capabilities, geographic factors, obstructions or interference, may mean you will not receive the voice and data service at certain times of making broadband voice (VoIP) calls, and the service quality may drop.

To eliminate any technical problems, Clear Networks recommends that the computer download be reduced or stopped to increase the performance and quality of the ClearTalk broadband voice (VoIP) service. As standard, customers can expect the voice quality of a broadband voice (VoIP) call to be similar to that of a call made on a mobile phone service.

Compatibility: Please be aware that VoIP hardware, equipment or software may not be compatible with operating systems other than Windows. Please check with the hardware, equipment or software provider to confirm compatibility.

1 Definitions and Interpretation

1.1 Definitions

In these Terms of Service:

Enabling Device means a VoIP adapter or other internet telephony connection device provided to you by or on behalf of Clear Networks;

Documentation means any online or otherwise enclosed documentation provided to you by or on behalf of Clear Networks;

Effective Date means the date on which Clear Networks activates your Service;

ISP means Internet Service Provider;

Clear Networks means Clear Networks Pty Ltd (ABN 24 418 211 265) trading as Clear Networks;

Clear Networks Network means the call switching and media proxy equipment and software, routers, switches and gateways that allow calls between Clear Networks customers;

Clear Networks Website means the website owned and operated by Clear Networks Pty Ltd, being www.clearnetworks.com.au ;

Service means the payable internet telephony service and any related products or services supplied to you by Clear Networks, including the Standard Service, the Softphone Service and other products or services the Clear Networks may supply you from time to time;

Software Terms and Conditions means:

(a) in relation to the Softphone Service, the Softphone Software Terms and Conditions (a copy of which can be found at www.clearnetworks.com.au); and

Terms of Service means these terms and conditions as amended from time to time in accordance with clause 14;

User means any person, whether authorised or unauthorised, using the Service or Device provided to you;

You means the user or customer of the Clear Networks Service, whether an individual or a body corporate and "your" has a corresponding meaning.

1.2 Interpretation

(a) Where "you" comprises of more than one person, then each person is jointly and severally bound by these Terms of Service, anything contemplated by these Terms of Service and the

Documentation.

(b) In these Terms of Service unless otherwise required by the context:

- (1) words importing the singular include the plural; and
- (2) "including" and "includes" are not words of limitation.

(c) The headings and bolding used in these Terms of Service are for convenience of reference and do not affect the interpretation of these Terms of Service.

(d) If there is any inconsistency between the Documentation and these Terms of Service, these Terms of Service prevail to the extent of the inconsistency.

2 Service

2.1 Duration of Service

(a) Clear Networks will provide the Service to you from the Effective Date for successive periods of one month.

(b) This contract will automatically renew at the expiry of each month for a further one-month period without further action by you, unless you give Clear Networks written notice of non-renewal at least 10 days before the end of the current monthly period.

(c) You will be responsible for the full charges for each month, including the month in which you give notice of non-renewal and (if you give notice later than 10 days before the expiry of that month) the following month. All unpaid charges (including unbilled charges) will become immediately due upon your written notice of non-renewal.

2.2 Loss of Service due to power failure etc

You acknowledge that:

(a) the Service will not function in the event of power failure until power is restored;

(b) the Service requires a fully functional broadband connection to the Internet . Accordingly, in the event of an outage of, or termination of service with, your ISP, the Service will not function until the broadband connection is restored;

(c) the Service will not function if Clear Networks suspends or terminates your Service for any reason set out in these Terms of Service, until Clear Networks restores your Service;

(d) despite any failure of power or broadband connection, you will continue to be billed for the Service until this contract is terminated; and

(e) if you have been provided with a Device, you may need to reset or reconfigure the Device following a power outage before using the Service again.

2.3 Suspension of Service

(a) If your use of the Service does not appear to be consistent with its usual use we may, for your protection, suspend your Service. We will only do this where it appears to us that the number of calls or charges for calls have increased significantly.

(b) We will make reasonable efforts to contact you before suspending your Service. This may not be possible if we need to suspend your Service outside of normal working hours.

2.4 Maximum call duration

Individual calls exceeding 90 minutes are terminated automatically by Clear Networks. This policy is for your protection so calls that are not properly completed (eg phone handset is not hung up correctly) do not continue to accrue charges.

2.5 Service distinctions

You acknowledge that the Service is not a standard telephone service. Important distinctions exist between the Service and a standard telephone service. Not all of these distinctions are described in these Terms of Service. The Service may be subject to different regulatory

treatment than a standard telephone service.

2.6 No 1900+ calling, may not support 1300+ calling

The Service does not support premium service 1900+ calling (including collect, third party billing or calling card calling). The Service may not support other 1300+ services in one or more (or all) service areas.

2.7 Number transfers on Service termination

Upon termination of the Service, Clear Networks may, at its sole discretion, release to your new service provider a telephone number that you ported in from a previous service provider to Clear Networks and used in connection with your Service, if:

- (a) your new service provider is able to accept the number;
- (b) your Service has been terminated;
- (c) you do not owe any amounts to Clear Networks, including any charges or termination fees; and
- (d) you request the transfer upon terminating your Service.

2.8 Geographic Number

Where a plan includes a real geographical number. You will be allocated a number either within your current area zone (depending on your current telephone number), or within a region of your choice. All user details that are offered to a customer while they are purchasing the ClearTalk broadband voice (VoIP) service will always remain the property of Clear Networks. This includes, but is not limited to, usernames, passwords and access phone numbers.

Disconnected ClearTalk broadband voice (VoIP) services that originally had a geographic number will have that number held for a period of not more than 90 days before it is reissued to a new customer.

3 Device

3.1 Delivery and installation

- (a) If you have subscribed for the Device, Clear Networks will deliver the Device to the address provided by you in writing at your cost.
- (b) The Device is exclusively for use in connection with the Service. Clear Networks will not provide any passwords, codes or other information or assistance that would enable you to use the Device for any other purpose.
- (c) You must install the Device in accordance with the instructions set out in the Documentation and any further instructions given to you by Clear Networks from time to time (if any).

3.2 Title and risk

- (a) Notwithstanding delivery, installation and acceptance of the Device, title to the Device passes from Clear Networks to you only when you have paid for the Device in full in accordance with clause 7. Until that time, you hold the Device on trust for Clear Networks.
- (b) Despite paragraph (a), you bear the risk related to the Device at all times after the Device leaves Clear Networks's premises or a supplier's premises (as the case may be) for delivery to you, and Clear Networks is not liable for any loss or damage to the Device from that time.

3.3 Damaged Device

- (a) If the Device or the cartons in which the Device arrived are visibly damaged upon your receipt of them, you must note the damage on the carrier's freight bill or receipt and keep a copy.

(b) In such event, you must keep the original carton, all packing materials and parts intact in the same condition in which they were received from the carrier and contact Clear Networks's customer care department immediately at the address or phone number given in clause 7.5, or email support@clearnetworks.com.au.

4 Your Service subscription

4.1 Residential use of Service and Device

(a) This clause 4.1 applies if you have subscribed to Clear Networks's residential services.

(b) The Service and Device are provided to you as a residential user, for your personal, residential, non-business and non-professional use.

(c) You must not use, or allow the Service or Device to be used for any commercial or governmental activities, profit-making or non-profit, including home office, business, sales, tele-commuting, or any other activity that would be inconsistent with normal residential usage patterns.

(d) You agree that if you use, or permit any other person to use, the Service or the Device for any non-residential purpose, then you must pay Clear Networks's higher rates for commercial service in respect of all periods in which you used the Service or the Device for such purpose.

(e) Clear Networks may immediately terminate or modify the Service if Clear Networks determines, in its sole discretion, that your Service is being used for non-residential or commercial use.

4.2 Home office use of Service and Device

(a) This clause 4.2 applies if you have subscribed to Clear Networks's SOHO (Small Home Office) services.

(b) You must not use, or allow the Service or Device to be used for any governmental activities, or any other activity that would be inconsistent with normal usage patterns for a small, self-owned, home-based business.

4.3 Small-to-medium enterprise use of Service and Device

(a) This clause 4.3 applies if you have subscribed to Clear Networks's SME (small-to-medium enterprise) services.

(b) You must not use, or allow the Service or Device to be used, for any governmental activities, or for any other activity that would be inconsistent with normal usage patterns for a small to medium enterprise.

5 Your cooperation

5.1 Use of Service and Device

You must use the Service and the Device in accordance with these Terms of Service, the Documentation and any relevant laws.

5.2 Lawful use

You must not use, nor allow any person to use, the Service or the Device:

(a) fraudulently or illegally, or for any obscene, offensive or illegal purpose;

(b) to send a communication which is, or is intended to be, a hoax call or which is spiteful, indecent, defamatory, offensive, abusive, obscene or menacing;

(c) to violate or infringe any rights of, or to cause unwarranted inconvenience or anxiety to, any other person; or

(d) in such a way that may damage or affect the operation or quality of the Service, the Clear

Networks Network or any telecommunications system used to provide the Service.

5.3 Failure to comply with lawful use

(a) Clear Networks may terminate your Service immediately and without advance notice if Clear Networks, in its sole discretion, considers that you have breached, or are likely to breach, clause 5.2, in which case clause 8.3 will apply, and you will, in addition, be liable to pay a termination fee in accordance with clause 7.

(b) If Clear Networks, in its sole discretion, believes that you have breached clause 5.2, Clear Networks may forward the objectionable material, as well as your communications with moo and your personally identifiable information to the appropriate authorities for investigation and prosecution and you hereby consent to such forwarding.

5.4 Appropriate use

(a) You, and any User, must not use the Service for auto-dialling, continuous or extensive call forwarding, telemarketing (including charitable or political solicitation or polling), fax broadcasting or fax blasting.

(b) You must not sell, assign, rent, lease, distribute, act as an intermediary or provider, or otherwise grant rights to third parties with regard to the Service or Device, without first obtaining express written permission from Clear Networks, or permit or cause any other person to do so.

(c) Clear Networks may immediately terminate or modify the Service if Clear Networks considers, in its sole discretion, that you have, or are likely to, breach paragraph (a) or (b).

5.5 Tampering with Device or Service

You and any User must not:

(a) modify or tamper with the Device, change the electronic serial number or equipment identifier of the Device or perform a factory reset of the Device, or cause or allow any other person to do so, without express permission from Clear Networks (which Clear Networks may grant or withhold at its sole discretion);

(b) alter, remove or erase any identifying name, name plate, identification number, trade mark or any other notice or indication of intellectual property rights on the Device;

(c) reverse compile, disassemble or reverse engineer or otherwise attempt to derive the source code from the binary code of any hardware or software used in connection with the Device or Service;

(d) reproduce the Device or the Documentation;

(e) act in any other manner that is inconsistent with Clear Networks's intellectual property rights in the Device; or

(f) hack or disrupt the Service or make any use of the Service that is inconsistent with its intended use, or attempt to do so.

Clear Networks may terminate your Service immediately and without advance notice if Clear Networks, in its sole discretion, considers that you have breached any of paragraphs (a) to (f), in which case clause 8.3 will apply, and you will, in addition, be liable to pay a termination fee in accordance with clause 7.

5.6 Theft of service

(a) You must notify Clear Networks immediately, in writing or by calling the Clear Networks customer support line, if the Device is stolen or if you become aware at any time that your Service is being stolen or fraudulently used. When you call or write, you must provide your account number and a detailed description of the circumstances of the Device theft or fraudulent use of the Service.

(b) Failure to comply with paragraph (a) in a timely manner may result in the termination of your

Service and additional charges to you.

(c) Until such time as Clear Networks receives notice of the theft or fraudulent use, you will be liable for all use of the Service using a Device stolen from you and any and all stolen Service or fraudulent use of the Service.

5.7 Use of equipment other than Device

(a) You acknowledge that the Service may not operate correctly in conjunction with any VoIP adapter or equipment other than the Device.

(b) Clear Networks may at any time prohibit the use of the Service through equipment other than the Device, either in a particular case or generally.

(c) If you decide to use the Service through an interface device not provided by Clear Networks, you warrant that you possess all required rights, including software and hardware licenses, to use that interface device with the Service.

6 Emergency Services - 000 Dialling

6.1 Application

(a) This clause 6 applies if you reside in, and use the Service within Australia.

(b) If you use the Service in a country other than Australia, you acknowledge that the Service does not support emergency services dialling (eg, fire, police, ambulance or hospital emergency services etc) and that you should always have an alternative means to call emergency services.

6.2 000 Dialling Service

(a) You acknowledge that the Service does NOT support some parts of the traditional 000 emergency services.

(b) Clear Networks does offer access to 000 services as described below, but you acknowledge and understand that 000-type dialling is different in a number of important ways (some, but not necessarily all of which are described in these Terms of Service) from traditional 000 services.

(c) You must inform any household residents, guests and other third persons who may be present at the physical location where you utilise the Service of the non-availability of traditional 000 dialling from your Clear Networks Service and Device(s).

6.3 Description of 000 Dialling Capabilities

Clear Networks does offer access to 000 dialling service in Australia. When you dial 000, your call is routed from the Clear Networks network to 000 Emergency Services who have access to name and address details provided by you when you signed up for the Clear Networks Service. This information is stored in the Integrated Public Number Database (IPND) which is administered by Telstra under Australian Government legislation. The emergency service operator accesses your information by using the telephone number (or Calling Line ID (CLI)) that was assigned to your Device by Clear Networks. The information in the IPND contains the service address you provided as well as an indicator that this is a VoIP service and therefore the service address cannot be relied on to provide an accurate location for the caller.

6.4 Service Outage

(a) Power failure or disruption: You acknowledge that 000 dialling does not function from the Service in the event of a power failure or disruption. Should there be an interruption in the power supply, the Service and 000 dialling will not function until power is restored. A power failure or disruption may require you to reset or reconfigure equipment prior to utilising the Service or 000 dialling.

(b) Broadband service/ISP outage or termination/ Suspension or termination by Clear Networks:

You acknowledge that service outages or suspension or termination of service by your broadband service provider or ISP or by Clear Networks will prevent ALL Services, including 000 dialling.

(c) Service outage due to suspension of your account: You acknowledge that service outages due to suspension of your account as a result of billing issues will prevent ALL Services, including 000 dialling.

(d) Other service outages: You acknowledge that if there is a service outage for ANY reason, such outage will prevent ALL Services, including 000 dialling. Such outages may occur for a variety of reasons, including those reasons described elsewhere in these Terms of Service.

(e) Limitation of liability and indemnification: You acknowledge that Clear Networks's liability is limited for any Service outage or inability to dial 000 from your line or to access emergency service personnel, as set out in these Terms of Service.

6.5 Failure to designate correct physical address when signing up for the Service

If you fail to provide the current and correct physical address of the place where you use the Service by following the instructions on the Service sign-up page, then the operator who receives any 000 call from your Service will not be able to get an accurate location of the caller. This must be the actual physical street address where you are located, not a post office box, mail drop or similar address.

6.6 Requires re-activation if you change your number or add or port new numbers

You acknowledge and understand that 000 will not be able to accurately locate the caller if you:

(a) change your phone number; or

(b) add or port any new numbers to your account,

until you have successfully updated your physical address details in the "My Profile" section of the Clear Networks Website.

6.7 Requires update if you move or change location

You acknowledge and understand that 000 will not be able to accurately locate the caller if you move to a different address or otherwise change the physical location of the Device or the place where you utilise the Service to a different street address, until you have successfully updated the current and correct physical address and location of the place where you utilise the Service or use the Device using the "My Profile" section of the Clear Networks Website.

6.8 Alternative 000 arrangements

You acknowledge that Clear Networks cannot guarantee access to emergency services through 000. You should always have an alternative means of accessing traditional 000 services. The Device has a second telephone port to allow a traditional standard telephone service to be attached and to provide a fail safe service should there be a power outage or an interruption to Internet services. This fail safe will also provide traditional access to 000 emergency services but only if you maintain a traditional telephone service with a third party telecommunications provider.

7 Payment

7.1 Charges

You must pay, in accordance with this clause 7:

(a) if you have subscribed for the Device, the price for the Device, and shipping and handling of the Device, as stated on the Clear Networks Website at the Effective Date;

(b) the Pay-As-You-Go fee or the pre-paid service as set out on the Clear Networks Website at

the Effective Date;

(c) the monthly charges for the Service at the prices set out in the call Rates section or the Clear Networks Website, as amended by Clear Networks from time to time;

(d) all usage charges associated with the Service, including calls to international numbers and mobile phones, and advanced feature charges;

(e) termination fees as set out on the Clear Networks Website (none: should we put in here and say any updates would be on the news and information section of the website) at the date of termination of this agreement; and

(f) any other amounts as set out on the Clear Networks Website at the date of termination of this agreement for use of the Device or the Service.

7.2 Charges may change

(a) Clear Networks may increase the monthly charges for the Service from time to time at its discretion.

(b) You will be notified of changes to monthly charges via the news and information section of the Clear Networks Website in accordance with clause 14.

7.3 No deductions

You must pay all money owing to Clear Networks on the due dates for payment in full without any setoffs (legal, equitable or otherwise), counterclaims, deductions, reductions, discounts or allowances of any kind.

7.4 Billing

(a) You must give us a valid credit card number (Visa, MasterCard, Bankcard, or any other issuer then accepted by Clear Networks), when the Service is activated. Clear Networks reserves the right to stop accepting credit cards from one or more issuers.

(b) If the card expires, you close your account, your billing address changes, or the card is cancelled and replaced owing to loss or theft, you must advise Clear Networks immediately.

(c) Clear Networks will bill all charges, applicable taxes and surcharges monthly in advance (except for usage-based charges, which will be billed monthly in arrears, and any other charges which Clear Networks decides to bill in arrears). Clear Networks reserves the right to bill at more frequent intervals if the amount due at any time exceeds \$25. Any usage charges will be billed in increments that are rounded up to the nearest minute except as otherwise set forth in the rate schedules on the Clear Networks Website.

(d) Local and national calls are charged per call, calls-to-mobiles and international calls are charged per minute. Call value inclusions are applied on a monthly basis and must be used within billing month and cannot be rolled over. Calls to 1900, 0055 incur surcharges.

7.5 Billing disputes

You must notify Clear Networks in writing within 7 days after receiving your credit card or bank statement if you dispute any Clear Networks charges on that statement or such dispute will be deemed waived. Billing disputes should be notified to the following address:

Customer Care Department

Clear Networks

PO Box 333

Blackburn VIC 3130

or

send an email to accounts@clearnetworks.com.au

or

phone 1300 855 215 between 8am and 8pm (Eastern Standard Time).

7.6 Payment

(a) Clear Networks accepts payments only by credit card or direct debit for some services as set out in clause 7.4. Your initial use of the Service authorises Clear Networks to charge the credit card or direct debit account number on file with Clear Networks, including any changed information given to Clear Networks if the card expires or is replaced, or if you substitute a different card, for Clear Networks charges as set out in clause 7.1.

(b) This authorisation will remain valid until 30 days after Clear Networks receives your written notice terminating Clear Networks's authority to charge your credit card, whereupon Clear Networks will charge you any other outstanding charges and terminate the Service.

7.7 Failure to pay

If any charge to your credit card on file with Clear Networks is declined or reversed, or your credit card expires and you have not provided Clear Networks with a valid replacement credit card, or in case of any other non-payment, Clear Networks may, without prejudice to any other right or remedy available to it:

(a) suspend your Service until the default is made good; and

(b) terminate your Service, in which case clause 8.3 will apply and you will be liable for all costs incurred by Clear Networks in collecting amounts that you owe, including collection costs and legal fees on a full indemnity basis.

7.8 Taxes

You are responsible for, and must pay, any applicable taxes, fees or charges now in force or enacted in the future, that arise from or as a result of your subscription or use or payment for the Service or a Device. Such amounts are in addition to payment for the Service or Devices and will be billed to your credit card as set forth in these Terms of Service. If you are exempt from payment of such taxes, you must provide Clear Networks with an original certificate that satisfies applicable legal requirements attesting to tax-exempt status. Tax exemption will only apply from and after the date Clear Networks receives such certificate.

8 Termination of Service

8.1 Clear Networks may terminate

Clear Networks reserves the right to suspend or discontinue providing the Service generally, or to terminate your Service, at any time in its sole discretion.

8.2 Termination for Clear Networks' convenience

If Clear Networks discontinues providing the Service generally, or terminates your Service in its discretion without a stated reason, you will only be liable for charges accrued through to the date of termination, including a pro-rated portion of the final month's charges.

8.3 Termination for cause

If your Service is terminated for any stated reason, including:

(a) a breach of these Terms of Service; or

(b) any improper use of the Service or Device (such as your attempts to hack, disrupt, or misuse the Service or your acts or omissions that violate any acceptable use policy of Clear Networks or of a third party provider to which Clear Networks is subject),

you will be liable for the full month's charges to the end of the current term, including unbilled charges, all of which immediately become due and payable and may at Clear Networks' discretion be immediately charged to your credit card or direct debit card.

9 Equipment Warranty

The warranty on equipment is the responsibility of the manufacturer. Refer to the manufacturer's warranty instructions supplied with the equipment.

10 Disclaimer, Limitation of warranties and limitation of liability

10.1 Important Disclaimer

You acknowledge and agree that, subject to clause 10.2:

- (a) Clear Networks;
- (b) any other person whose website is linked to a website of Clear Networks; and
- (c) any officer, employee, agent or related company of any of the persons referred to in paragraphs (a) and (b),
(each a "Supplier")

are not liable for any Loss, however caused (including but not limited to, by the negligence of any Supplier), suffered by you arising from or in connection with these Terms of Service or the Services.

You must indemnify a Supplier against any Loss suffered or incurred by that Supplier arising from or in connection with any Claim made against a Supplier by you.

10.2 Exclusion of warranties

(a) Except for:

- (1) the express terms and warranties set out in these Terms of Service; and
- (2) those implied terms or warranties that are imposed by statute that are mandatory and cannot be excluded,

Clear Networks gives no warranties and all other terms, conditions, warranties, stipulations or other statements whatsoever, whether express or implied, by statute or common law, or otherwise howsoever, are expressly excluded.

(b) Notwithstanding anything else in these Terms of Service, where any statute implies any terms or warranty into these Terms of Service, and that statute avoids or prohibits provisions in a contract excluding or modifying that term or warranty (except in certain cases), that term or warranty will be deemed to be included in these Terms of Service, but Clear Networks' liability respectively for breach of that term will be limited to, so far as permitted by that statute, in one or more ways (at Clear Networks's option) permitted by subsection 68A(1) of the Trade Practices Act 1974 (Cth), sub-section 35(1) of the Fair Trading Act 1987 (WA) or any other similar provision contained within any other like statute.

10.3 Exclusion of liability for content

(a) You acknowledge that the content of communication spread by the use of any Clear Networks service (including the Service) is the responsibility of the person from whom the content originated. Clear Networks is not liable for any type of communication spread by means of a Clear Networks service (including the Service) or network.

(b) Clear Networks does not guarantee or warrant the security of any data that is transmitted between you and any other person via the Service, regardless of whether the data represents voice, text messages or any other form of communication.

10.4 Limit of liability

In any event, you acknowledge and agree that, to the extent permitted by law, the aggregate liability of Clear Networks, its directors, employees, agents, subcontractors and contractors to you or any third party for all Claims is limited in aggregate to the amount of fees and usage

charges received by Clear Networks from you over the period of 12 months prior to the date on which the breach giving rise to the Claim first arises.

10.5 No liability for consequential losses

Clear Networks is not liable to you or any other person for indirect, special, incidental or consequential loss or damage (including loss resulting from business interruption, lost data, lost profits, or damages arising out of or in connection with the use or inability to use the Service, including inability to be able to dial 000 or to access emergency service personnel through the Service), whether in an action for contract, negligence, other tort or other cause of action of any kind, suffered or incurred by any person arising from or in connection with these Terms of Service. The limitations in this clause apply whether or not Clear Networks was informed of the likelihood of any particular type of damages.

10.6 No third party beneficiaries

These Terms of Service do not provide any person or entity that is not a party to these Terms of Service with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.

11 Your representations and liability

11.1 Representations

You represent and warrant that you are over the age of 18 years and are authorised to enter into this agreement with Clear Networks and comply with the Terms of Service.

11.2 Indemnity

- (a) You are solely liable for your use of the Service and the Device, and for the use of your Service and Device by any other person.
- (b) You agree to defend, indemnify, and hold harmless Clear Networks, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection with these Terms of Service or the Service, from all claims, losses, damages, fines, penalties, costs and expenses (including legal fees on a full indemnity basis) by you or on your behalf, or by or on behalf of any third party or user of your Service, relating to this agreement (including these Terms of Service), the Services, including 000 dialling, or the Device.

11.3 Extension of indemnity

Without in any way limiting the generality of clause 11.2, the indemnity contained in clause 11.2 extends to any loss or damaged caused by:

- (a) absence, failure or outage of the Service, including 000 dialling;
 - (b) your inability, or the inability of any other person, to be able to dial 000 or to access emergency service personnel;
 - (c) your or a User's use of the Service or Device;
 - (d) your or a User's use of the Service together with an interface device other than the Device;
- and
- (e) removal of your Device from Australia.

11.4 Content

- (a) You are solely liable for all liability that may arise out of the content transmitted by you or Users using the Service.
- (b) No action of Clear Networks under these Terms of Service constitutes review or approval of your or a User's use or content.

11.5 Survival

This clause 11 survives termination of these Terms of Service.

12 Intellectual Property

12.1 Ownership

All intellectual property rights regarding the Service and the Device, including any software, hardware and Documentation embedded in or related to the Service or the Device, are and will remain the sole property of Clear Networks and its suppliers. Provision of the Service or the Device does not imply any transfer of intellectual property rights.

12.2 Licence

You obtain only a non-exclusive, non-transferable, revocable licence to use the Service, the Documentation, and any software hardware embedded in the Device in object code form (without making any modification to it) for the duration of the Service strictly in accordance with these Terms of Service.

12.3 Clear Networks' marks

All websites (including the Clear Networks Website), corporate names, service marks, trade marks, trade names, logos and domain names of Clear Networks are and remain the exclusive property of Clear Networks, and nothing in these Terms of Service gives you any right to use any of them.

13 General

13.1 Mandatory arbitration

- (a) Any dispute or claim between you and Clear Networks arising out of or relating to the Service or the Device must be resolved by arbitration before a single arbitrator. The arbitrator's decision must follow the plain meaning of the relevant documents, and is final and binding.
- (b) Without limiting paragraph (a), the parties agree that no arbitrator has the authority to award relief in excess of what these Terms of Service provide, or award punitive or exemplary damages.
- (c) Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. All claims must be arbitrated individually and you must not bring or join any class action of any kind in court or in arbitration, or seek to consolidate or bring previously consolidated claims in arbitration.
- (d) You agree that regardless of any statute or law to the contrary, you must refer to arbitration any claim or cause of action against Clear Networks arising out of or related to use of the Service, the Device or these Terms of Service within 1 year after the claim or cause of action arose or be forever barred.
- (e) Nothing in this clause will prevent a party from seeking urgent interlocutory relief before an appropriate court.

13.2 Governing Law

- (a) These Terms of Service are governed by the laws of Victoria.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria, to the extent that court action is initiated to enforce an arbitration award or for any other reason consistent with clause 13.1.
- (c) Each party irrevocably waives any immunity in respect of its obligations under these Terms

of Service that it may acquire from the jurisdiction of any court or any legal process for any reason including the service of notice, attachment before judgment, attachment in aid of execution or execution.

13.3 Waiver

A failure by Clear Networks to exercise or enforce any right or provision of these Terms of Service does not constitute a waiver of such right or provision.

13.4 Entire Agreement

(a) These Terms of Service, the rates schedule for Services found on the Clear Networks Website and the applicable Software Terms and Conditions (if any) constitute the entire agreement between you and Clear Networks and govern your use of the Service, superseding any prior agreements between you and Clear Networks and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter.

(b) No amendment to this agreement will be binding upon Clear Networks unless it is posted in accordance with clause 14.

13.5 Severability

If any part of these Terms of Service is legally declared invalid or unenforceable, all other parts of these Terms of Service are still valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of these Terms of Service.

13.6 Assignment

(a) You are not allowed to assign this agreement or any of your rights arising under it.

(b) Clear Networks is allowed to, at its sole discretion, assign this agreement or any rights arising under it to any affiliate or any other person upon notice to you.

14 Changes to these Terms of Service

(a) Clear Networks may change these Terms of Service from time to time by posting a notice of the change on the "News and Information" section of the Clear Networks Website.

(b) Such changes will become binding on you on the date that the notice is posted to the Clear Networks Website and no further notice by Clear Networks is required.

(c) These Terms of Service as posted supersede all previously agreed to electronic and written terms of service, including any terms included with the packaging or Device.

15 Privacy

The Service utilises, in whole or in part, the public Internet and third party networks to transmit voice and other communications. Clear Networks is not liable for any lack of privacy which may be experienced with regard to the Service. Please refer to our Privacy Policy applicable to you at www.cleARNETWORKS.com.au for additional information.