

# CLUBCOM UTILITIES

## TERMS, CONDITIONS & ACCEPTABLE USE POLICY

### - INTERNET SERVICES -



ClubCOM Utilities Pty Ltd (ClubCOM) maintains its policy to provide a variety of options for connection to the Internet, ranging from low cost family and educational packages to more advanced corporate alternatives, with minimum disruption to connectivity for customers. ClubCOM's services are exclusively available for residents of estates or Clubs affiliated with ClubCOM in Australia.

Any application made by you is subject to acceptance by ClubCOM .

Given that ClubCOM is focused on providing internet services to a select demographic, customers can be assured that the Services they receive are of an excellent standard.

ClubCOM acknowledges that by virtue of this Agreement it is acting as an Internet Service Provider (ISP) as defined by the Broadcasting Services Act 1992 (Broadcasting Act) and as a Content Service Provider as defined by the Telecommunications Act 1997 (Telecommunications Act).

ClubCOM abides by the Internet Industry Codes of Practice (Codes), released by the Internet Industry Association (IIA) and registered by the Australian Communications and Media Authority (ACMA).

ClubCOM encourage all its customers to download and install an accredited Family Friendly Filter to supplement the internet Services provided by ClubCOM.

ClubCOM's Services are designed to be shared by customers in a fair and equitable manner and not to be monopolized or abused by individuals at the expense of others. The freedom of ClubCOM subscribers to access the World Wide Web for legitimate purposes should not be limited by the actions of a small number of subscribers to their systems. The use of the World Wide Web is regulated by various statutory enactments and other laws. The Terms and Conditions help to ensure that ClubCOM as well as customers comply with their obligations at law.

ClubCOM encourages end user empowerment with respect to managing Content issues. You hereby acknowledge that as part of this Agreement, you understand that ClubCOM is in no way responsible for any Prohibited Content that you or any other person receive by way of the Service provided to you or any other person by ClubCOM.

New and existing customers should be aware that ClubCOM Utilities only method of payment is by Direct Debit from your nominated bank account or Credit Card account.

#### 1. DEFINITIONS

- 1.1. Agreement means these Terms and Conditions and any variations or further Terms and Conditions accepted by you from time to time.
- 1.2. Australian Privacy Laws means the Privacy Act 1988 (Cth).
- 1.3. Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or bank holiday in Melbourne, Victoria.
- 1.4. Business User means any business which enters into a Customer Plan agreement with ClubCOM.
- 1.5. Carriage Service has the same meaning as in the Telecommunications Act 1997 (Cth).
- 1.6. ClubCOM is a reference to ClubCOM Utilities Pty Ltd (A.C.N. 114 234 338) and includes any of its related bodies corporate (as that term is defined in the Corporations Act).
- 1.7. Codes means the Internet Industry Codes of Practice released by the Internet Industry Association (IIA) and registered by the Australian Communications and Media Authority (ACMA).
- 1.8. Commencement of Service means the date on which ClubCOM starts supplying the Service to you, or is deemed to do so.

- 1.9. Content means all forms of information and, without limitation, includes text, pictures, animation, video and sound recording, separately or combined, may include computer software, computer games, within the meaning of the Classification (Publications, Films and Computer Games) Act 1995 (Cth) and includes a "Content Service" within the meaning of the Telecommunications Act 1997 (Cth).
- 1.10. Content Service has the same meaning as given by the Telecommunications Act 1997 (Cth).
- 1.11. Content Service Provider has the same meaning as given by the Telecommunications Act 1997 (Cth).
- 1.12. Credit Card means any credit or charge card accepted by ClubCOM as a form of payment from time to time.
- 1.13. Customer Plan means the ClubCOM Customer Plan chosen by you.
- 1.14. Customer Services Centre means ClubCOM support line 1300 880 809.
- 1.15. Direct Debit means an automatic method of payment which involves regular deposits made by the customer to a ClubCOM nominated bank account.
- 1.16. Direct Deposit means a method of payment which involves a deposit made by the customer to a ClubCOM nominated bank account.
- 1.17. Family Friendly Filter has the same meaning as in the Codes and Filter means any type of computer software program that monitors Content provided to the user and restrict Prohibited Content and Potential Prohibited Content.
- 1.18. GST has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 1.19. IIA means the Internet Industry Association (ACN 071 075 575).
- 1.20. IP Address means an Internet Protocol address.
- 1.21. ISP means internet service provider.
- 1.22. Network refers to the network and systems operated by ClubCOM .
- 1.23. Peak Periods means periods of time during which the network units used to provide the carriage of service are experiencing high levels of dependency from users.
- 1.24. Personal Information means information about you from which your identity is apparent or can reasonably be ascertained including your name, address, telephone number and other details relating to your personal or commercial credit information or credit rating.
- 1.25. Personnel means any person or persons who are employed by, representing or acting on behalf of ClubCOM .
- 1.26. Potential Prohibited Content has the same meaning as in the Codes.
- 1.27. Prohibited Content has the same meaning as in the Codes
- 1.28. Premises means the location or building to which this Service will be provided and the land at that location or on which the building stands.
- 1.29. Related Corporation of an entity means a body corporate that is related to that entity in any of the ways specified in section 50 of the Corporations Act 2001 (Cth).
- 1.30. Services means the Services set out in the Customer Plan chosen by you, and which may be varied by ClubCOM in accordance with this Agreement.
- 1.31. Service Charges means the charges for the Services as set out in the applicable Customer Plan and as advised to you by ClubCOM from time to time in accordance with this Agreement.
- 1.32. Tax means any value added or goods and services tax, withholding tax, charge (and associated penalty and interest), rate, duty or impost imposed by an authority but does not include any income or capital gains tax.
- 1.33. Terms and Conditions means this 'Terms, Conditions & Acceptable Use Policy' agreement.
- 1.34. "User", "you" or "your" means any person or device that connects to the Network for the purpose of gaining access to the Network.

- 1.35. World Wide Web means the complete set of documents residing on all internet servers that use the hypertext transfer protocol (HTTP), which is made available and accessible to users via the HTTP protocol.
- 1.36. In this Agreement, unless otherwise indicated by the context:
- (a) words importing the singular include the plural and vice versa;
  - (b) headings are for convenience only and do not affect interpretation of this Agreement;
  - (c) a reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this Agreement;
  - (d) where any word or phrase is given a definite meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
  - (e) an expression importing a natural person includes a body corporate, partnership, joint venture, association or other legal entity;
  - (f) a reference to a statute, statutory provision or regulation includes all amendments, consolidations or replacements thereof;
  - (g) a reference to a party to a document includes that party's successors and permitted assignees;
  - (h) a covenant or agreement on the part of two or more persons binds them jointly and severally; and
  - (i) a reference to a body, whether statutory or not:
    - (i) which ceases to exist; or
    - (ii) whose powers or functions are transferred to another body;is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

## 2. SERVICES

- 2.1. ClubCOM will supply the Service on the terms and conditions of the Customer Plan for the Service.
- 2.2. By using or subscribing to ClubCOM you are subject to the following Terms and Conditions. You are deemed to have accepted these Terms and Conditions once you subscribe to, or first use the Services provided by ClubCOM, whichever event is earlier in time.
- 2.3. If you acquire more than one service from ClubCOM, then each service will be provided under the terms and conditions of the Customer Plan for that service.
- 2.4. It is not possible to deliver the Service free from all faults. ClubCOM endeavours to provide the Service using all reasonable care and skill.
- 2.5. Subject to clauses 2.4, 17 and 18, the Service is to be provided twenty four hours a day, 7 days a week.

## 3. REGISTRATION

- 3.1. In order to complete a registration form, you must be at least eighteen years of age, and provide your correct name, current address and telephone number. A current driver license showing your date of birth may also be required as part of determining your correct identity and you agree to immediately inform ClubCOM of any changes to your personal details.
- 3.2. Your privacy will be respected at all times, however ClubCOM may monitor or keep any records necessary that relate to your use of the Service.
- 3.3.

#### 4. NOTICES

- 4.1. ClubCOM may vary the Services and Service Charges set out in the Customer Plan from time to time provided notices are sent to your ISP e-mail address and or by mail to your main place of residence.

#### 5. GENERAL CONDITIONS

- 5.1. ClubCOM provides a Service that is available twenty four hours a day to the optic fibre, wireless or telephone connection at your Premises. The type of connection to be used for the Service will be identified in your Customer Plan.
- 5.2. The Services provided by ClubCOM, as a minimum specification, are suitable for IBM PC compatible Windows 98SE, 2000, Me and XP or Macintosh O/S 9.0 and higher. This will ensure that your computer is configured correctly.
- 5.3. You are responsible for the installation, use or any fees associated with any equipment or software that you may require in order to access the Services.
- 5.4. The Services do not include, and ClubCOM is under no obligation to provide, domain name server Services, domain name registration functions, or IP addresses to you. However, if these services are required by Customers, ClubCOM will assist customers to register domain names with a domain name registry. If a permanent IP Address is required for a Business User ClubCOM will provide an address subject to availability. A Service Charge may be levied for these additional business services.
- 5.5. You agree not to sell or resupply, for reward or otherwise, the Services to any person.
- 5.6. Your use of, or subscription to, ClubCOM (including any additional Services offered from time to time) constitutes acceptance of, and is governed by, these Terms and Conditions.

#### 6. CUSTOMER PLANS

- 6.1. All current plans are published on ClubLINKS' website and on all ClubCOM application forms which are available at all locations where the ClubCOM Services are sold.
- 6.2. Plans are subject to Terms and Conditions.
- 6.3. Plans are subject to change and subscriptions to any plan may be limited to ensure appropriate network performance. Selected plans may be withdrawn when fully subscribed.

#### 7. YOUR CONDUCT

- 7.1. You are responsible for all Service Charges relating to the Services provided by ClubCOM to your Premises, whether those Services were used by you or by someone else.
- 7.2. You must reasonably co-operate with ClubCOM to allow ClubCOM to establish and supply the Service to you safely and efficiently. This includes following ClubLINKS' reasonable requests to provide ClubLINKS' Personnel with safe and prompt access to your Premises, equipment, data and information.
- 7.3. You agree not to place, store or relay software or information on the Network which is unlawful, or attempt to access internal areas of the Network or engage in any form of destructive or disruptive action against the Network.
- 7.4. You agree not to use the Service:
  - (a) to break any law or to infringe another person's rights;
  - (b) to expose ClubCOM to liability;
  - (c) in any way which damages, interferes with or interrupts the Service, or any telecommunications network, equipment, or facilities, or cabling controlled by ClubCOM or any other internet service provider; and
  - (d) in any way which may damage any property or injure or kill any person.
- 7.5. You must not use, or attempt to use, the Service to transmit, publish or communicate material

which is defamatory, offensive, abusive, indecent, menacing or unwanted.

## 8. SERVICE CHARGES

- 8.1. You must pay the charges for the Service set out in the Customer Plan. Service Charges accrue from no later than the Commencement of Service.
- 8.2. ClubCOM may charge you an additional amount in relation to any service, modification or repair of the Service or any equipment.
- 8.3. In calculating the Service Charges, ClubCOM uses information generated or received by ClubCOM or its suppliers. ClubCOM may round up any charge to the nearest cent.

## 9. BILLING

- 9.1. ClubCOM will invoice you monthly, but reserves the right to amend the billing period.
- 9.2. ClubLINKS' preferred method of sending bills is via email to your ISP e-mail address (as per ClubLINKS' Customer records). Any alternative method of billing must be agreed upon by ClubCOM.
- 9.3. Invoices are payable within 14 days of issue.
- 9.4. The Service may be suspended if accounts are not paid within 21 days of issue.
- 9.5. ClubCOM has the right to terminate the Service if payment of invoices are overdue.
- 9.6. You must pay all charges incurred in respect of the use of the Service and equipment, whether or not the Service was used by you or someone else without your authority.
- 9.7. ClubCOM may charge you a late payment fee on overdue amounts of \$11.00 per month. If the amount overdue is greater than \$100.00, ClubCOM may charge you a further amount of 2.2% above the prime lending rate of ClubCOM principal banker calculated daily on the overdue amount. For Services that are suspended for non payment ClubCOM may charge a suspension fee of \$35.00.

## 10. TAXES

- 10.1. Service Charges do not include any amount on account of Tax unless otherwise stated.
- 10.2. If any Taxes are payable on the Service Charges, you must pay ClubCOM an additional amount equal to the Taxes as included in your invoice.

## 11. GST

- 11.1. GST
  - (a) Words used in this clause which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning as in that act unless the context otherwise requires.
  - (b) To the extent that the Services and any other supply made under or in connection with this Agreement is a taxable supply, the consideration for that supply is increased by an amount determined by ClubCOM, not exceeding the amount of that consideration multiplied by the rate at which GST is imposed in respect of the supply.
  - (c) The amount so determined must be paid by you even if you dispute the determination, and you shall indemnify ClubCOM in respect of any penalties that may apply in respect of the non-payment or late payment of any such GST owing.
  - (d) If an adjustment event occurs following a determination under clause 11.1(b)
    - (i) ClubCOM must make a further determination of the amount of consideration payable; and
    - (ii) if the GST component of that consideration differs from the amount originally determined, the amount of the difference must be paid by, refunded to or

credited to you, as the case may be, within thirty (30) days of the end of the billing period.

- (e) ClubCOM must issue to you a Tax Invoice which complies with the A New Tax System (Goods and Services Tax) Act 1999 (Cth) in the same calendar month in which payment of an amount of GST by you is due in accordance with clause 11.1(c).

## **12. PRIVACY AND PERSONAL INFORMATION**

- 12.1. During the subscription process, you will be asked to provide ClubCOM Personal Information and you authorise ClubCOM to obtain Personal Information about you to support your application to become a ClubCOM customer and to conduct all relevant credit checks and searches to enable ClubCOM to determine your credit-worthiness.
- 12.2. ClubCOM will endeavour to protect your Personal Information and will use the information to supply you with the Services under the Customer Plan.
- 12.3. ClubCOM will collect and use Personal Information about you primarily for the provision of Services. As a secondary purpose, such Personal Information may be used for:
  - (a) billing and account management;
  - (b) business planning and development of Services; and
  - (c) to provide you with information about ClubCOM Services, offers and promotions.
- 12.4. ClubCOM may disclose Personal Information about you to any Related Corporation, supplier, dealer, contractor or franchisee of ClubCOM for the purpose of providing the Services.
- 12.5. If you choose not to disclose Personal Information, ClubCOM may be restricted in the manner in which it is able to supply Services to you.
- 12.6. Your Service is covered by Australian Privacy Laws for your protection. You may be required to prove your identity before Personal Information or account changes will be discussed.
- 12.7. If you wish only to receive information that is account related or legally required and you do not wish to receive information about ClubCOM Services, offers and promotions you may choose to "opt out" of receiving such other information by contacting the ClubCOM Customer Services Centre.

## **13. PASSWORD**

If you use a security password to access and modify your Service requirements, you are responsible for keeping the password confidential. You are responsible for any charges incurred as a result of the use of the password facility.

## **14. CHANGING YOUR PLAN**

You may select a different plan at any time by calling ClubLINKS' Customer Services Centre. Outstanding Service Charges must be paid before any change of Service will come into effect.

## **15. CANCELLATION**

To cancel your Service, you must contact ClubLINKS' Customer Services Centre by telephone or provide notice in writing, 7 days prior to the expiry of your current subscription. If in writing the notice must be signed by the account holder. To protect your security and privacy, e-mail cancellations are not accepted.

## **16. TERMINATION**

- 16.1. ClubCOM may close, suspend or terminate your Service without refund or credit if in the opinion of ClubCOM you are in materially breach of the Terms and Conditions and you will remain liable for all Service Charges owing under the Agreement.
- 16.2. You may terminate the Service if:

- (a) ClubCOM is in serious breach of this Agreement (it will be in serious breach if it breaches its obligation to use reasonable care and skill in providing the Service); and
- (b) You have notified ClubCOM in writing of its breach and it has failed to remedy the breach within 30 days of your notice (if the breach can be remedied). If the breach is something which cannot be remedied, you may immediately terminate your Service with notice to ClubCOM .

## 17. TECHNICAL CONDITIONS

- 17.1. For clients on shared connections, during Peak Periods, network capacity may become limited and access is not guaranteed. For clients on optic fibre connections local network capacity is not affected by Peak Periods, however, external internet conditions on the World Wide Web can affect performance and access is not guaranteed.
- 17.2. Business Services such as multiple logins, terminal logins, permanent IP address, or web server facilities must be negotiated as part of the Services. Additional Service Charges may apply for these Services.

## 18. LIMITATION OF LIABILITY

- 18.1. ClubCOM is not responsible for any loss damage or injury (including without limitation any loss of profit, indirect, consequential or incidental loss, damage or injury) arising from your use of the Service.
- 18.2. ClubCOM is dependant on external networks and data services. You waive your right to any claim against ClubCOM for an inability to provide such Services which are beyond its control. ClubCOM does not guarantee that access to any system, either internal or external, will be available at any given time or that the files, information or Services will be fault or error free.
- 18.3. The failure of ClubCOM at any time to enforce or require the strict compliance of any provision in the Agreement shall not be interpreted as a variation of this Agreement.
- 18.4. ClubCOM may vary this Agreement at any time by giving you notice.
- 18.5. ClubCOM may assign this Agreement at any time by giving you notice.
- 18.6. This Agreement is binding upon your successors, assignees, heirs, executors and administrators. If you are under the age of eighteen years and have failed to disclose this to ClubCOM , this Agreement is legally binding on your parents or legal guardians.

## 19. COMPLAINTS OR QUERIES

Should you ever be dissatisfied with the standard of the Services provided to you by ClubCOM or in any way confused as to part of this Agreement, please direct such complaints or queries to the Customer Services Centre.

## 20. FORCE MAJEURE

- 20.1. ClubCOM will not be liable nor deemed to be liable to you for failure or delay in meeting any obligation due to strikes and/or lockouts (whether of their own employees or those of others and whether or not the party against whom such action is taken could have avoided the same by acceding to the demands of the employees responsible for such action) Acts of God, war, fire, flood, embargo, litigation, acts of government or any agency instrumentality or any political subdivision thereof or any cause beyond the control of ClubCOM .
- 20.2. In any such event, the time for performance of the obligations under this Agreement will be extended by the same period or periods (as the case may be) for which performance is delayed. ClubCOM will use its best endeavours to avoid or remove such causes of non-performance and will continue performance hereunder with the utmost despatch as soon as such causes are removed. Nothing in this clause will be construed as requiring ClubCOM to settle any industrial dispute.

## **21. COUNTERPARTS**

This Agreement may be executed in any number of counterparts and all such counterparts taken together will be deemed to constitute one instrument.

## **22. SEVERABILITY**

If any clause or part of a clause of this Agreement is invalid, illegal, unlawful or otherwise is incapable of enforcement, that clause or part of a clause will be deemed to be severed from this Agreement and of no force and effect but all other clauses and parts of clauses of this Agreement will nevertheless prevail and remain in full force and effect and be valid and fully enforceable and no clause or part of a clause of this Agreement will be construed to be dependent upon any other clause or part of a clause unless so expressed.

## **23. GOVERNING LAW AND JURISDICTION**

This Agreement is governed by the laws in force in Victoria, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria when determining any dispute concerning this Agreement.