

SNAP VPN Terms of Use

- 1. General Terms & Definitions.** As used herein, "SNAP VPN" refers to an integrated, high-speed data networking, internet access, security and network appliance and associated network environment along with maintenance thereof provided by ClearPath Networks, Inc. ("ClearPath") to Customer. Current pricing and service term for SNAP VPN is set forth in the SNAP VPN Purchase Agreement (Purchase Agreement) executed between ClearPath and Customer. SNAP VPN functionality provided hereunder does not include creating and/or maintaining the Customer's Local Area Network ("LAN"). By accepting SNAP VPN provided by ClearPath, Customer agrees to abide by all of the provisions, terms and conditions of this Agreement and the Purchase Agreement.
- 2. Payment.** In consideration of ClearPath's performance as set forth herein, Customer agrees to pay ClearPath current prices for SNAP VPN on a monthly basis as a Monthly Recurring Charge (the "MRC") for the duration of the contract period set forth in the Purchase Agreement (the "Term"). The MRC is due and payable in advance. Unless terminated by either party with at least 60 days notice prior to the end of the Term, the Term will automatically be renewed for successive one-year periods at ClearPath's then-current prices. For a one (1) year Term, subsequent MRC will not increase more than once annually. If the Term is multi-year, the MRC for each year of that Term shall be expressly set forth in the Purchase Agreement. In the event of termination for any reason except for Customer's breach or convenience, Customer shall be entitled to a refund of fees already paid, prorated for the unused portion of such fees. If Customer declines renewal and then subsequently elects to re-commence SNAP VPN functionality and maintenance, or if SNAP VPN functionality and maintenance is discontinued at Customer's request and then subsequently renewed, Customer shall pay the fees that would have been due for the period during which SNAP VPN functionality and maintenance was not provided.
- 3. Maintenance.** Pursuant to this Agreement and upon payment of the applicable MRC, ClearPath shall provide maintenance of the SNAP VPN for the Term. ClearPath agrees to provide maintenance solely for the unmodified SNAP VPN products as provided by ClearPath. Subject to Customer's security requirements, Customer agrees to provide ClearPath reasonable direct or remote access and test time on SNAP VPN for the purpose of diagnosing reported problems. Maintenance may also include any patch releases ("Patch Releases") that ClearPath in its sole discretion provides to Customer. Patch Releases are intended to address material deviations between the SNAP VPN software and its published specifications until a new release can be made available. All Patch Releases are provided without any warranty of any kind. ClearPath shall not be responsible for maintenance of any SNAP VPN component that fails to comply with their published specifications if such non-compliance is the result of modification of the equipment provided by ClearPath. If ClearPath expends its time on a maintenance issue that is found to be the result of any of the preceding, Customer shall pay ClearPath for such time at ClearPath's then-current hourly consulting rate pursuant to its Service Level Agreement (SLA) rates. Current SLA provisions can be found as posted at the following URL: www.clearpathnet.com/terms.
- 4. Installation.** Customer will be responsible for the installation of SNAP VPN equipment. If configuration aid is needed, ClearPath will assist the Customer via telephone. Additional charges may apply for non-standard installations.
- 5. Cancellation.** Customer may cancel this Agreement upon prior written notice to ClearPath Networks, Attn: Billing Manager, or via email to billing@clearpathnet.com, within 30 days following the installation and activation of the SNAP VPN at the Customer's premises (the "Service Commencement Date"). In that event, Customer shall return all SNAP VPN equipment and shall discontinue use of SNAP VPN. Upon receipt of SNAP VPN equipment, ClearPath shall credit Customer for all fees previously paid and Customer shall have no liability whatsoever under this Agreement. ClearPath shall not be liable for any third party cancellation/termination charges relating to the installation and/or cancellation of SNAP VPN.
- 6. Billing.** Customer may be charged (a) a one-time fee for any SNAP VPN equipment purchased or leased at the time of installation ("Equipment Fee"), and for the installation thereof if non-standard ("Installation Fee"), and (b) a monthly fee for SNAP VPN functionality and maintenance ("MRC"). The Installation Fee, Equipment Fee and MRC will be the rates indicated on the Purchase Agreement of this Agreement. The first invoice for each Customer location shall be sent after SNAP VPN equipment has been delivered to Customer. All bills are due upon receipt, and shall be considered late if not received as specified below, based upon billing choice. Three billing choices are available: Credit Card, Invoice (payable by check) or Electronic Funds Transfer (EFT); please allow up to 30 days when changing billing choice. Customer has up to 60 days to resolve billing disputes. Customers selecting Credit Card payment as billing choice will be charged on, or about, the Invoice date for charges owed. Customers selecting Invoice billing will have up to 15 days from Invoice date to submit payment, at which point late charges will accrue. Customers selecting EFT payment type have up to 20 days from Invoice date to schedule payment transfer day, which will then become the funds transfer date thereafter. Notwithstanding the above, no payments shall be due until at least thirty (30) days after the Service Commencement Date. Late payments (for all billing choices) will accrue interest at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower; and Customer shall pay all collection costs incurred by ClearPath (including, without limitation, reasonable attorneys fees). All returned payments are subject to \$20 NSF charge. Unless otherwise specified by ClearPath, all checks shall be mailed, with accompanying bill, to: **ClearPath Networks, Attn: Billing, 1940 East Mariposa Avenue, Suite 150, El Segundo, CA 90245**. In the event of a billing dispute, the parties herein agree to quickly resolve such dispute by mutual agreement or arbitration. ClearPath's invoices shall bill Customer for the MRC one month in advance.
- 7. Taxes and Fees.** All charges hereunder are net of Applicable Taxes (as defined below). Except for taxes based on ClearPath's net income, Customer will be responsible for payment to ClearPath for all applicable taxes that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges, however designated, imposed on, incident to, or based upon the provision, sale or use of the SNAP VPN (collectively "Applicable Taxes").
- 8. Changes of Service Address.** This Mutual Agreement is between Customer and ClearPath, and is for provided at the specified address set forth herein; changes to locations require notification of change by Customer to ClearPath and are subject to service availability at new address. This agreement will remain binding and enforceable upon change of address by Customer.
- 9. Customer Term and Service Termination.** Customer agrees to continue SNAP VPN for the Term set forth on the Purchase Agreement. The Term shall commence on the Service Commencement Date. After completion of the initial Term, Customer agrees to continue to renew services for successive 12 month terms thereafter, unless written notification is delivered by Customer to ClearPath within 60 days of the expiration of each successive Term. ClearPath shall provide SNAP VPN to Customer subject to continuing payment of applicable fees, and Customer's compliance of terms and conditions that shall continue to apply. If Customer terminates SNAP VPN prior to the expiration of the Term, provided that ClearPath is not in breach of the Agreement, Customer agrees to pay an Early Termination Fee equal to 100% of the MRC for the months remaining in the Term, as damages to ClearPath for each service ordered. After 30 days of nonpayment from any due date, ClearPath may suspend or terminate SNAP VPN and/or this agreement and Customer shall remain responsible for all fees accrued prior to the date of termination and for termination fees as outlined in this section. Either party may terminate this agreement if other party materially breaches any term or condition of this agreement and fails to cure such breach within 30 days after receipt of written notice of the same,

except as specified otherwise. ClearPath reserves the right to terminate the Mutual Agreement and/or any related Exhibits with reasonable cause.

10. **Equipment Warranty and Returns.** If Customer receives defective equipment or if the equipment becomes defective through no fault of Customer ("fault of Customer" includes electrical failure in facility or failure to protect device with surge protector) during the original warranty period of the equipment as specified by the equipment's manufacturer, ClearPath shall replace via mail the defective equipment within two business days of receipt of the defective unit from the Customer.
11. **Disclaimer of Warranty.** SNAP VPN is PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE THEREOF IS AT ITS OWN RISK. CLEARPATH DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. CLEARPATH DOES NOT WARRANT THAT SNAP VPN WILL PERFORM AT A PARTICULAR SPEED, WILL NEVER INTERFERE WITH 911, 411 OR OTHER EMERGENCY OR ANCILLARY SERVICES, WILL BE UNINTERRUPTED, WILL HAVE NO DATA LOSS, OR WILL BE ERROR-FREE OR COMPLETELY SECURE.
12. **Limitation of Liability and Liquidated Damages.** IN NO EVENT WILL CLEARPATH BE LIABLE TO OR ANY THIRD PARTY FOR ANY CLAIMS ARISING OUT OF, OR RELATED TO CUSTOMER'S BUSINESS OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF DATA OR ABILITY TO PLACE A VOICE CALL, INCLUDING, BUT NOT LIMITED TO, CALLS TO 911). CLEARPATH SHALL NOT BE LIABLE FOR ANY DAMAGES ASSOCIATED WITH THE INTERRUPTION OR LOSS OF USE OF SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY WILL BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY FOR ANY LOST REVENUE, LOST PROFITS, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT. CLEARPATH AND CUSTOMER AGREE THAT IF CLEARPATH SHOULD BE FOUND LIABLE FOR LOSS OR DAMAGE DUE FROM FAILURE OF CLEARPATH TO PERFORM ANY OF THE OBLIGATIONS HEREIN, CLEARPATH'S LIABILITY FOR DAMAGES SHALL BE LIMITED TO ONE MONTH'S SERVICE BILLING AT THE APPLICABLE LOCATION(S), AS LIQUIDATED DAMAGES AND NOT AS A PENALTY, AND THIS LIABILITY SHALL BE EXCLUSIVE.
13. **Indemnification.** Customer agrees to and shall indemnify and save harmless ClearPath, its employees and agents, for and against, third party claims, lawsuits and losses alleged to be caused by (a) Customer's breach of this Agreement or the Purchase Agreement; (b) Customer's use of SNAP VPN in violation of the terms of this Agreement or in violation of ClearPath's Acceptable Use Policy or (c) any negligence or willful misconduct of Customer or Customer's employees or Agents.
14. **Acceptable Use Policy.** Customer has read and understands ClearPath's Acceptable Use Policy, and Customer agrees that ClearPath may permanently cancel SNAP VPN provided to Customer without notice. The Acceptable Use Policy is posted at the following URL: www.clearpathnet.com/terms.
15. **Force Majeure.** Neither party hereto shall be responsible for any failure to perform its obligations under this agreement if such failure is caused by acts of God, war, strikes, revolutions, earthquake, act of terrorism, lack or failure of transportation facilities, laws or governmental regulations or other causes that are beyond reasonable control of such party.
16. **Arbitration.** Binding arbitration shall be the sole and exclusive remedy for resolutions of disputes between the parties to this agreement. Such dispute shall be submitted for arbitration in Los Angeles, California under the rules of the American Arbitration Association. The arbitrator's decision will be final and entered into any court of competent jurisdiction. The prevailing party will be entitled to recover its attorney's fees and costs in connection with such arbitration.
17. **Reselling of SNAP VPN.** Customer is prohibited from reselling or wholesaling any services or products purchased from ClearPath or any of its authorized agents or resellers without prior written permission.
18. **Miscellaneous.** This agreement is not assignable or transferable by Customer without prior written consent of ClearPath, except by merger, acquisition of all or substantially all of the assets or a change of control. Ten days notice must be provided prior to any such assignment, and Customer shall sign an assumption agreement in the form provided by ClearPath. ClearPath may subcontract performance of SNAP VPN to third parties. The parties agree that they are independent contractors and that this agreement and relations between Customer and ClearPath hereby established do not constitute a joint venture, agency or contract of employment between them, or any other similar relationship. Neither party has the right or authority to assume or create any obligation or responsibility on behalf of the other. Any notice or consent required or permitted hereunder shall be in writing, and effective on the date delivered. Failure or delays to exercise any right hereunder will not operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. This agreement shall be binding and enforceable against both parties regardless of a change in the speed of the SNAP VPN provided hereunder. If any part of this agreement shall be adjudged by any court of competent jurisdiction or any other government authority to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this agreement shall otherwise remain in full force and effect and enforceable. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of California, without regard to conflict of laws provisions thereof. Any waivers or amendments shall be in writing. This agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written or oral agreements and communications relating to the subject matter of this agreement.