

Broadband Community Panel Terms & Conditions

Approved by OMB
3060-1139
Expires 03/31/2011

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. BY APPLYING TO BECOME A PARTICIPANT IN THE BROADBAND COMMUNITY PANEL AND/OR INSTALLING THE WHITE BOX, YOU ARE AGREEING TO THESE TERMS AND CONDITIONS.

YOUR ATTENTION IS DRAWN PARTICULARLY TO CONDITIONS 3.5 (PERTAINING TO YOUR CONSENT TO YOUR ISPS PROVIDING CERTAIN INFORMATION AND YOUR WAIVER OF CLAIMS), 6 (LIMITATIONS OF LIABILITY), AND 7 (DATA PROTECTION).

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply to these terms and conditions.

Connection: the Participant's own broadband internet connection, provided by an internet service provider.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

ISP Router: the Participant's broadband router or cable modem, used to provide the Participant's Connection.

Requirements: the requirements specified by SamKnows as part of the sign-up process that the Participant must fulfill in order to be selected to receive the Services.

White Box: the Netgear router and any additional supporting hardware supplied to the Participant by SamKnows.

SamKnows: the organization providing the Services and conducting the Program, namely:

- SamKnows Limited (Co. No. 6510477) of 25 Harley Street, London W1G 9BR

Services / Program: the performance and measuring services and research program (Broadband Community Panel) in respect of broadband internet connections, to be provided as set out in the Schedule.

Software: the software that has been installed or remotely uploaded onto the White Box.

Test Results: Information concerning the Participant's ISP service results.

Participant: an individual who volunteers to participate in the Program, under these terms and conditions. The Participant must be the named account holder.

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Participant's Equipment: any equipment, systems, cabling or facilities provided by the Participant and used directly or indirectly in support of the Services.

ISP: the company providing broadband internet connection to the Participant during the term of this program.

- 1.2 Headings in these conditions shall not affect their interpretation.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of these terms and conditions.
- 1.5 A reference to writing or written includes faxes and e-mails.
- 1.6 Any obligation in these terms and conditions on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

2. SAMKNOWS' OBLIGATIONS

- 2.1 Subject to the Participant complying fully with these terms and conditions, SamKnows shall use reasonable endeavors to:
 - (a) provide the Services under these terms and conditions;
 - (b) supply the Participant with the White Box and instructions detailing how it should be connected to the Participant's ISP Router; and
 - (c) pay the Participant's reasonable postage costs for returning the White Box (if requested) following SamKnows' safe receipt of the White Box.
- 2.2 In addition, SamKnows shall:
 - (a) provide access to a Program-specific customer services email address, which the Participant may use contact to give feedback and comments;
 - (b) provide access to an online reporting system for access to Participant's broadband performance statistics.
- 2.3 While SamKnows will make all reasonable efforts to ensure that the Services cause no disruption to the performance of the Participant's broadband connection, including only running tests when there is no concurrent network activity at the Participant's location, the Participant acknowledges that the Services may occasionally impact on the performance of the Connection and agrees to hold SamKnows and their ISP harmless for any impact the Services may have on the performance of their Connection.

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3. PARTICIPANT'S OBLIGATIONS

3.1 The Participant is not required to pay any fee for the provision of the Services by SamKnows or to participate in the Program.

3.2 The Participant:

- (a) will ensure that they satisfy all of the Requirements (and will continue to do so);
- (b) will connect the White Box to their ISP Modem / Router within 14 days of receiving it;
- (c) agrees not to unplug or disconnect the White Box unless (i) they are absent from the property in which it is connected for more than 3 days and/or (ii) it is reasonably necessary for maintenance of the Participant's Equipment and the Participant agrees that they shall use reasonable endeavors to minimize the length of time the White Box is unplugged or disconnected;
- (d) will not in any way reverse engineer, tamper with, dispose of or damage the White Box (or attempt to do so);
- (e) will notify SamKnows within 7 days in the event that they change their internet service provider or their Connection (for example, downgrading/upgrading to a different broadband package);
- (f) will inform SamKnows of a change of postal or email address by email; within 7 days;
- (g) agrees that the White Box may be upgraded to incorporate changes to the Software and/or additional tests at the discretion of SamKnows (whether by remote uploads or otherwise);
- (h) will, on completion or termination of the Services, return the White Box to SamKnows by mail, if requested by SamKnows. Once SamKnows has safely received the White Box, SamKnows will pay the Participant the reasonable postage costs for returning the White Box;
- (i) will be an active part of the Program and as such will use all reasonable endeavors to complete the market research surveys received within a reasonable period of time; and
- (j) will not publish data, give press or other interviews regarding the Program without the prior permission in writing of SamKnows.

3.3 The Participant will not provide the White Box or the Software to any third party, including (without limitation) to any internet service provider.

3.4 The Participant represents and undertakes that they are not an employee / agent of, or relative of, an employee / agent of an ISP or any affiliate of any ISP. In the event that they become one, they will inform SamKnows, who at its complete discretion may ask for the immediate return of the White Box.

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3.5 THE PARTICIPANT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION The Participant expressly consents to having their ISP provide to SamKnows and the Federal Communications Commission (FCC) information about the Participant's broadband service, for example: service address, speed tier, local loop length (for DSL customers), equipment identifiers and other similar information, and hereby waives any claim that its ISP's disclosure of such information to SamKnows or the FCC constitutes a violation of any right of privacy or any other right or privilege that Participant may have under any federal, state or local statute, law, ordinance, court order, administrative rule, order or regulation, or other applicable law, including, without limitation, under 47 U.S.C. §§ 222 and 631 (each a "Privacy Law"). If notwithstanding Participant's consent under this Section 3.5, Participant, the FCC or any other party brings any claim or action against any ISP under a Privacy Law, upon the applicable ISP's request SamKnows promptly shall cease collecting data from such Participant and remove from its records all data collected with respect to such Participant prior to the date of such request, and shall not provide such data in any form to the FCC. The Participant further consents to transmission of information from this Program, and by Participant's ISP to SamKnows in the United Kingdom, SamKnows' processing of it there and return to the United States.

4. INTELLECTUAL PROPERTY RIGHTS

- 4.1 All Intellectual Property Rights relating to the White Box are the property of its manufacturer. The Participant shall use the White Box only to allow SamKnows to provide the Services.
- 4.2 As between SamKnows and the Participant, SamKnows owns all Intellectual Property Rights in the Software. The Participant shall not translate, copy, adapt, vary or alter the Software. The Participant shall use the Software only for the purposes of SamKnows providing the Services and shall not disclose or otherwise use the Software.
- 4.3 Participation in the Broadband Community Panel gives the participant no Intellectual Property Rights in the Test Results. Ownership of all such rights is governed by Federal Acquisition Regulation Section 52.227-17, which has been incorporated by reference in the relevant contract between SamKnows and the FCC. The Participant hereby acknowledges and agrees that SamKnows may make such use of the Test Results as is required for the Program.

5. SAMKNOWS' PROPERTY

The White Box and Software will remain the property of SamKnows. SamKnows may at any time ask the Participant to return the White Box, which they must do within 28 days of such a request being sent. Once SamKnows has safely received the White Box, SamKnows will reimburse the Participant's reasonable postage costs for doing so.

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6. LIMITATIONS OF LIABILITY - THE PARTICIPANT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- 6.1 This condition 6 sets out the entire financial liability of SamKnows (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Participant, including (without limitation) in respect of:
- (a) any use made by the Participant of the Services, the White Box and the Software or any part of them; and
 - (b) any representation, statement or tortious act or omission (including negligence) arising under or in connection with these terms and conditions.
- 6.2 All warranties, conditions and other terms implied by statute or other law are, to the fullest extent permitted by law, excluded from these terms and conditions.
- 6.3 Nothing in these terms and conditions limits or excludes the liability of SamKnows:
- (a) for death or personal injury resulting from its negligence; or
 - (b) for any damage or liability incurred by the Participant as a result of fraud or fraudulent misrepresentation by SamKnows; or
 - (c) under Part 1 of the Consumer Protection Act 1987; or
 - (d) in relation to any other liabilities which may not be excluded or limited by applicable law.
- 6.4 Subject to condition 6.2 and condition 6.3, SamKnows' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of these terms and conditions shall be limited to \$100.
- 6.5 In the event of any defect or modification in the White Box, the Participant's sole remedy shall be the repair or replacement of the White Box at SamKnows' reasonable cost, provided that the defective White Box is safely returned to SamKnows (in which case SamKnows shall pay the Participant's reasonable postage costs).
- 6.6 The Participant acknowledges and agrees that these limitations of liability are reasonable in all the circumstances, particularly given that no fee is being charged by SamKnows for the Services or participation in the Program.
- 6.7 It is the Participant's responsibility to timely pay all service and other charges owed to its ISP and to comply with all other ISP applicable terms. The Participant shall ensure that broadband traffic does not exceed the data allowance included in his/her broadband package. If usage allowances are accidentally exceeded and the Participant is billed additional charges from the ISP as a result, SamKnows is not under any obligation to cover these charges although it may choose to do so at its discretion.

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7. DATA PROTECTION - THE PARTICIPANT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

7.1 The Participant acknowledges and agrees that his/her personal data, such as service tier, address and line performance, will be processed by SamKnows in connection with the program. Except as required by law or regulation, SamKnows will not provide the Participant's personal data to any third party without obtaining prior consent. For the avoidance of doubt, the Participant acknowledges and agrees that subject to the privacy policies discussed below data collected may be shared with third parties as necessary to conduct the program and all aggregate statistical data produced as a result of the Services (including the Test Results) may be provided to third parties. As part of the recruitment and data cleaning process, SamKnows may share some Participant information with ISPs so that they may confirm the service tiers of panelists.

8. TERM AND TERMINATION

8.1 Each party may terminate the Services immediately by written notice to the other party at any time. Notice of termination may be given by email. Notices sent by email shall be deemed to be served on the day of transmission if transmitted before 5.00 pm on a working day, but otherwise on the next following working day.

8.2 On termination of the Services (for any reason):

- (a) SamKnows shall have no further obligation to provide the Services; and
- (b) the Participant shall safely return the White Box to SamKnows, if requested by SamKnows, (in which case SamKnows shall pay the Participant's reasonable postage costs).

8.3 Notwithstanding termination of the Services and/or these terms and conditions, clauses 1, 3.3 and 4 to 14 (inclusive) shall continue to apply.

9. SEVERANCE

9.1 If any provision of these terms and conditions (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of these terms and conditions, and the validity and enforceability of the other provisions these terms and conditions shall not be affected.

10. ENTIRE AGREEMENT

10.1 These terms and conditions constitute the whole agreement between the parties and replace and supersede any previous agreements or undertakings between the parties.

10.2 Each party acknowledges that, in entering into these terms and conditions, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty.

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11. ASSIGNMENT

- 11.1 The Participant shall not, without the prior written consent of SamKnows, assign, transfer, charge, mortgage, subcontract all or any of its rights or obligations under these terms and conditions.
- 11.2 Each party that has rights under these terms and conditions is acting on its own behalf and not for the benefit of another person.

12. NO PARTNERSHIP OR AGENCY

Nothing in these terms and conditions is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor make any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

13. RIGHTS OF THIRD PARTIES

A person who is not a party to these terms and conditions shall not have any rights under or in connection with it.

14. PRIVACY AND PAPERWORK REDUCTION ACTS

- 14.1 SamKnows, on behalf of the FCC, is collecting and storing broadband performance information, including various personally identifiable information (PII) such as the street addresses, email addresses, sum of data transferred, and broadband performance information, from those individuals who are participating voluntarily in this test. PII not necessary to conduct this study will not be collected. Certain information provided by or collected from you will be confirmed with a third party, including your ISP, to ensure a representative study and otherwise shared with third parties as necessary to conduct the program. SamKnows will not release, disclose to the public, or share any PII with any outside entities, including the FCC, except as is consistent with the SamKnows privacy policy or the terms of this agreement. See <http://www.samknows.com/broadband/privacy.php>. The broadband performance information that is made available to the public and the FCC, will be in an aggregated form and with all PII removed. For more information, see the Privacy Act of 1974, as amended (5 U.S.C. § 552a), and the SamKnows privacy policy.
- 14.2 The FCC is soliciting and collecting this information authorized by OMB Control No. 3060-1139 in accordance with the requirements and authority of the Paperwork Reduction Act, Pub. L. No. 96-511, 94 Stat. 2812 (Dec. 11, 1980); the Broadband Data Improvement Act of 2008, Pub. L. No. 110-385, Stat 4096 § 103(c)(1); American Reinvestment and Recovery Act of 2009 (ARRA), Pub. L. No. 111-5, 123 Stat 115 (2009); and Section 154(i) of the Communications Act of 1934, as amended.
- 14.3 *Paperwork Reduction Act of 1995 Notice.* We have estimated that each volunteer participating in this study will assume a one hour time burden over the course of the study. Our estimate includes the time to sign-up online, connect the hardware device in the home,

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and periodic validation of the hardware. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, Office of Managing Director, AMD-PERM, Washington, DC 20554, Paperwork Reduction Act Project (3060-1139). We will also accept your comments via the Internet if you send an e-mail to PRA@fcc.gov. Please DO NOT SEND COMPLETED APPLICATION FORMS TO THIS ADDRESS. You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number and provides you with this notice. This collection has been assigned an OMB control number of 3060-1139. THIS NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507. This notice may also be found at <https://www.testmyisp.com/paperwork.html>.

15. JURISDICTION

- 15.1 These terms and conditions shall be governed by the laws of the state in which SamKnows maintains its principal place of business in the United States, or, if SamKnows does not maintain a principal place of business in the United States, the state in which the Participant resides.

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SCHEDULE

THE SERVICES

Subject to the Participant complying with its obligations under these terms and conditions, SamKnows shall use reasonable endeavors to test the Connection so that the following information is recorded:

- i. Web browsing
- ii. Video streaming
- iii. Voice over IP
- iv. Download speed
- v. Upload speed
- vi. UDP latency
- vii. UDP packet loss
- viii. Consumption
- ix. Availability
- x. DNS resolution
- xi. ICMP latency
- xii. ICMP packet loss

In performing these tests, the White Box will require a variable download capacity and upload capacity per month, which will be available to the Participant in monthly reports from SamKnows. The Participant acknowledges that this may impact on the performance of the Connection.

SamKnows will perform tests on the Participant's Connection by using SamKnows' own data and will not monitor the Participant's content or internet activity. The purpose of this study is to measure your connection and compare this data with other consumers to create a representative index of US broadband performance.