



TERMS & CONDITIONS

BETWEEN SCORCH COMMUNICATIONS LTD
(hereinafter referred to as "SCL")

Of the one part

AND CLIENT:
(hereinafter referred to as "the Customer")

Of the other part

1. THESE TERMS AND CONDITIONS shall be the conditions of the agreement to the fullest extent permissible by law. All other conditions, warranties, descriptions, representations and agreements, whether expressed or implied by law, trade, custom or otherwise are hereby excluded except for SCL's official printed warranty where such warranty is issued to the Customer and the Customer complies with the requirements of such warranty.

2. REPRESENTATIONS
No agent or representative of SCL is authorised to make any representations, statements, conditions or agreements not expressly confirmed by SCL in writing and SCL is in no way bound by any such unauthorised statements nor shall any such statements be or be capable of being taken to form part of a contract with SCL collateral to this Contract.

3. RISK
Risk of any loss or damage or deterioration of to the goods/equipment shall be borne by the Customer from the time of dispatch from SCL's premises.

4. DELIVERY
Delivery of the goods/equipment shall be at the sole risk of the Customer from the time the goods/equipment have been uplifted or from the time of dispatch to a carrier. Delivery address shall be noted on the goods/equipment and delivery of the goods/equipment shall be during the usual hours of business to the address nominated by the Customer.
The goods may not be returned except with the verbal or written consent of the director of SCL or another authorised person, and in that event on terms prescribed by SCL. Claims in respect of incorrect delivery must be made in writing within 24 hours of delivery. SCL shall not be liable for any delay in delivery or non-delivery due to causes of whatever kind beyond SCL's control.

5. PRICE
The Customer agrees to pay SCL the quoted price for the goods/equipment/parts or services (based on current SCL service plans) supplied to the Customer, verbally or in writing will be exclusive of Goods and Services Tax unless otherwise stated. SCL reserves the right to alter its prices at anytime and to pass on any cost increases outside its control which arise between the date of acceptance of the order and the date of delivery. SCL will however where prices have increased or a service was free and will now be chargeable, advise the Customer with a minimum of **10 working days** notice by sending communication via the client's preferred method of contact or email.

6. TERMS OF PAYMENT
Payment shall be made in full on the due date shown on your invoice or before the 20th day of the month following the month in which the invoice was issued. If payment is not received by SCL on the due date SCL may restrict, limit, or suspend your service/s and also charge a late payment fee.
Any and all costs incurred to SCL in attempting to collect payment will be borne by the customer. If the Customer defaults in any payments or if the Customer commits any act of bankruptcy or if a Customer does any act which would render it liable to be wound up, or a receiver appointed SCL may terminate this agreement without prejudice to any other rights and payment for all goods/equipment shall immediately become due and payable.
Malicious software such as Viruses, Trojan horses, Worms, Spy bots, Time bombs, Malware, etc can lead to unexpected over use of bandwidth and your monthly data allowance. You, the customer, shall be responsible of all the data use of your account with SCL, whether or not it is caused by use or malicious software. Payment for SCL service/s is by CRT, Direct Debit or Cheque.
No refund will be given on monthly fees paid in advance when you terminate an SCL service part way through a period for which payment has been made.

7. DEFAULT IN PAYMENT
If the Customer defaults in any term or condition of the contract, SCL without prejudice to any right it has in law or in equity, is hereby given the right by the customer to enter upon any premises where the goods/equipment supplied are situated and to take possession of and remove the same without being responsible for any damage thereby caused and SCL may resell such

goods/equipment and apply the proceeds towards payment of the purchase price; any shortfall shall be paid by the Customer.

8. CUSTOMER RESPONSIBILITIES

The Customer (end user of the service/s) must ensure that all the information provided to SCL is correct and also advise SCL immediately of any change of address, contact preference(s), or phone number. The Customer must ensure that they take adequate steps to protect their computer/s from Viruses, Trojan horses, Worms, Spy bots, Time bombs, Malware and **Unauthorized access**. The Customer is not to send or store any information through or on the SCL Network that contains Viruses, Trojan horses, Worms, Spybots, Time bombs and Malware. The customer agrees to not use SCL's Network or services for Unlawful purposes and not to use SCL's Network or services to obtain Unauthorized access to any person or persons computer system, network or communications system. The Customer also agrees not to use the SCL Network or services to be offensive or a nuisance to any other person or persons, including the forging of email or to create a false identity to mislead others upon the identity of the sender or the original origin of any message. The Customer agrees to keep their passwords for the SCL Network or services secure at all times.
The customer must notify SCL immediately in the event that you believe someone has obtained or discovered your password/s and maybe using your supplied SCL Network or services fraudulently. SCL will not be liable for any unauthorized use of your supplied SCL account / services. SCL may charge a fee if you require your account to be investigated or passwords to be reset. If SCL deems that your supplied SCL account has been used for inappropriate activity such as Unlawful use or abusive behavior etc, SCL may disconnect or suspend your SCL account without notice. If in the event that SCL incurs costs as a result of the misuse of your supplied SCL account/services, SCL may pass these costs on to you at its discretion as well as take any legal action that SCL deems appropriate.

9. CLAIMS / RETURNS

The liability of SCL for any loss or damage or injury arising directly or indirectly from any defect of the goods/equipment supplied is limited to the replacement or repair of such defective goods/equipment or damages not exceeding the invoice value of such defective goods/equipment at the option of SCL. SCL shall not be liable for any loss damage or injury caused by improper or incorrect installation operation or use of the goods/equipment supplied. SCL shall not be liable to the Customer for any consequential or indirect damage or loss of any kind whatsoever. Any claim by the Customer under this clause must be made in writing and received by SCL within 7 days after delivery of the goods/equipment. No returns for credit will be accepted unless made within 7 days of delivery to the customer.

10. WARRANTY

Subject to a 12 month written warranty which SCL may give to the Customer, all warranties and representations made by SCL employees, representative or agents, whether express or implied, statutory or otherwise, collateral or antecedent hereto or otherwise are expressly excluded. SCL's liability (if any) shall be restricted to the cost of the repair of the goods/equipment or to their replacement, or, to payment of damages not exceeding the value of the goods/equipment repaired or sold by SCL at that time.
Notwithstanding the provisions of the Contractual Remedies Act 1979 these shall be the only remedies available to the Customer.
SCL will as far as it is legally able to do so assign to the Customer the benefit of the manufacturer's warranty (if any) expressed or implied relating to the goods / equipment.
Apart from what is specifically outlined in this document, SCL provides no warranties whether expressed or implied, as to the service or services of any other service provider and as such SCL will have no liability in respect of your use of your SCL services or account that may infringe any third parties intellectual property or rights.

11. PROPERTY – SECURITY INTEREST

- (a) Ownership in the goods will not pass to the Customer and any proceeds of sale of the goods will belong to and be held in trust for SCL until the Customer has paid for the goods in full.
- (b) The Purchaser grants to SCL a security interest in the goods as security for payment of the Contract Price and all other monies payable from time to time to SCL by the Purchaser, and for the performance by the Purchaser of all the Purchaser's other obligations from time to time to SCL, (together the "Purchaser's Indebtedness and Obligations"). For the purposes of section 36 (1) (b) of the Personal Properties Securities Act 1999 ("PPSA"), and to ensure maximum benefit and protection for SCL by virtue of section 36(1)(b)(iii) of the PPSA, the Purchaser confirms and agrees that the Purchaser intends to and does grant to SCL as security for the Purchaser's Indebtedness and obligations, a security interest in all of the Purchaser's

present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ("Excepted Property").

- (i) in or to which the Purchaser has rights; and
- (ii) that has not been supplied by **SCL** to the Purchaser

other than any Excepted Property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by **SCL** to the Purchaser.

- (c) The Purchaser agrees to do anything that **SCL** requires to ensure that **SCL** has a perfected security interest and (if applicable) a purchase money security interest in the goods.
- (d) **SCL** may allocate all amounts received from the Purchaser in any manner it determines including any manner required to preserve any purchase money security interest in the goods notwithstanding any purported allocation by the Customer.
- (e) While the goods continue to secure the Purchaser's Indebtedness and Obligations the Purchaser must store the goods separately and clearly identify the goods as being subject to **SCL's** security interest.
- (f) The Purchaser agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply in this contract or the security under this contract and waives the Purchaser's rights under sections 121, 125, 131 and 132 of the PPSA.
- (g) The Purchaser waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under this contract.
- (h) The Purchaser must advise **SCL** immediately if the Purchaser commits any of the acts specified in clause 5 or of any action by third parties (including any of its creditors) affecting **SCL's** security interest in the goods

Ownership of all goods/equipment is retained by **SCL** to the fullest extent enforceable by law until payment is received in full. Therefore if any such goods/equipment is sold by the Customer prior to payment being made to **SCL**, or if they shall become constituents of any other goods/equipment, then the proceeds of sale thereof or such other goods/equipment shall be the property of **SCL** and held upon trust for **SCL** and shall be kept separate and identified as such and delivered to **SCL** on demand.

12. INTELLECTUAL PROPERTY

SCL's existing Intellectual Property is the absolute property of **SCL**. If **SCL** in the course of delivering services to you and through your **SCL** account makes modifications / changes and discoveries, all developments and Intellectual Property will remain the absolute property of **SCL**. This includes all software, materials, manuals, soft copies, hardcopies and any other format media to enable you to use the **SCL** service. **SCL** will grant you the customer a non-exclusive non-transferable license to use such software, documentation or material for your own use.

Any **SCL** granted non-exclusive non-transferable license will terminate in the event of the **SCL** account or service being terminated by the customer or **SCL** terminating the services. In the course of the customer using their **SCL** account service, you must not without prior written permission or consent, copy, modify, decompile or share any **SCL** Intellectual Property and you must not permit any third party to do so.

13. WAIVER

All the original rights, powers, exemptions and remedies of **SCL** shall remain in force notwithstanding neglect forbearance or delay in the enforcement thereof. Any waiver shall apply only to the particular transaction.

14. GOODS / SERVICES ON APPROVAL

Goods/equipment supplied 'on approval' will be supplied at **SCL's** discretion only on the provision of a customer Order Number. All goods/equipment supplied 'On Approval' shall be returned to **SCL** within 7days failing which an Invoice will be generated.

Goods / equipment supplied 'On Approval' shall be subject to the condition as to risk (ante).

15. TERMINATION OF THE AGREEMENT

Apart from where you have agreed to use the **SCL** Network/services for a set period of time, you may elect to terminate your agreement with **SCL** by calling the **SCORCH** contact center on **0800 SCORCH** and arranging the agreement to end. **SCL** will charge a disconnection fee which you agree to pay as a condition of termination. If the customer is on a plan that has a data allowance and is in excess of that data allowance, the customer agrees to be bound by these terms and conditions and to pay for any excess data usage as per the **SCL** plan you are using. You the Customer agree to pay any outstanding monies that may be owing to **SCL** in respect of the service/s **SCL** has provided you under your agreement.

16. SEVERABILITY

If any provision or part of a provision of these conditions shall not be enforceable or might prejudice the application of the conditions relating to Ownership of the

goods/equipment then that provision or part shall be deemed deleted and the rest of these conditions shall remain in full force and effect

17. THE SERVICES

SCL's wireless service is not guaranteed to be fault free or continuous. If you experience problems with your **SCL** service please call our **SCL** contact center on **0800 SCORCH**.

SCL has no obligation to provide you with support where the fault is with your computer, home PC LAN network (including wireless), your software (excluding any provided by **SCL**), or any other aspect of the internet that is not part or the **SCL** network, or you are using the **SCL** service incorrectly or any other event that is beyond our control. Stated speeds for your connection are the maximum speeds only and the actual service speed depends on a number of factors and thus we cannot guarantee you will achieve your maximum connection speed.

The **SCL** internet service provided is an "always on service" connection. You will be charged your monthly account fee whether you use the service or not. You cannot claim a refund for any unused portion of your data allowance for any respective billing period.

If you intend to change your address you may be able to transfer your service with you to your new address. Call **SCL's** contact center on **0800 SCORCH** with at least **14 days** advance notice of your intended time of change of address so that **SCL** can discuss options and the best way to minimise service disruption to you.

Please note that a new **SCL** term contract may apply.

SIGNED in Agreement

For and on behalf of

PP:

Dated/...../ **201**....
