



TERMS & CONDITIONS

1. ENTIRE AGREEMENT

- 1.1 These terms and conditions and the Scorch Communications (Canterbury) Limited Privacy Policy as amended from time to time shall be the conditions of the agreement between Scorch Communications (Canterbury) Limited ("SCCL") and you, the customer ("the Customer") for the supply and use of the Services and Equipment by the Customer. By accessing the SCCL Network and using the Equipment and Services, the Customer agrees to be bound by the terms and conditions contained in this agreement.
- 1.2 SCCL is entitled to amend these terms and conditions, the SCCL Network and/or what is included within the Services (including coverage area, availability and quality of service) at any time on notice to the Customer and otherwise in accordance with this Agreement.

2. THE SERVICES

- 2.1 Upon payment of the appropriate fees and charges, SCCL grants the Customer access to and the right to use the SCCL Network for each billing period in accordance with the terms of this Agreement.
- 2.2 In the event that the Services or access to the SCCL Network are unavailable or there is a fault in the Services or SCCL Network, the Customer is obligated to report such fault or unavailability to SCCL. SCCL has no obligation to provide the Customer with support where the fault is with the Customer's computer, equipment, home PC LAN network (including wireless), software (excluding any provided by SCCL), or any other aspect of the internet that is not part of the SCCL network, or where the Customer is using the Service incorrectly.
- 2.3 The Customer acknowledges that stated speeds for any connection to the SCCL Network and/or the Services are the maximum speeds only and the actual service speed received by the Customer may vary. SCCL does not warrant, represent or guarantee that the Customer will achieve any maximum/stated connection speeds.
- 2.4 The Services are provided as an "always on service" connection. The Customer acknowledges and agrees that the Customer will be charged the applicable fee for the Services whether the Services are used during the applicable billing period or not. The Customer expressly agrees that they cannot claim a refund for any unused portion of their data allowance (if any) for any respective billing period nor can any used portion of their data allowance be carried over to the next billing period.
- 2.5 The Services provided pursuant to this Agreement relate and are limited to the Customer's premises as notified by the Customer at the time of entering this Agreement. In the event that the Customer wishes to change the premises to which the Services are to be provided, they must give SCCL's at least ten (10) working days' notice and the Customer agrees that SCCL has the right to:
- (a) Charge a new Installation Fee; and
 - (b) Terminate this Agreement and enter into a new Agreement.
- 2.6 SCCL may at any time and without liability to the Customer, suspend, restrict or withdraw any part of the Services:
- (a) due to changes in or modifications to the SCCL Network or the SCCL Network coverage area;
 - (b) as a result of seasonal and/or event driven demand fluctuations;
 - (c) in order to carry out repairs, maintenance or development work on, or for the safety or protection of the SCCL Network;
 - (d) due to faults in the Services or SCCL Network;
 - (e) if requested by any government authority, government agency or law enforcement agency;

Scorch Communications (Canterbury) Ltd

Fast, Affordable, Reliable,
Broadband Services
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RBI - DSL - Fibre - VoIP

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P.O.Box 8708
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- (f) otherwise as SCCL reasonably deems to be necessary.
- 2.7 In suspending, restricting or withdrawing any part of the Services pursuant to clause 2.6 SCCL will only take steps reasonably required.
- 2.8 SCCL may at any time terminate the Services or this Agreement in the event that:
 - (a) it can be shown that there has been fraud or illegal activity by the Customer in its use of the Services;
 - (b) if any equipment (including the Equipment) of the customer is jeopardising the operation and quality of the SCCL Network or the Services or other customers of SCCL;
 - (c) if SCCL is required or instructed to do so by any government authority, government agency or law enforcement agency

3. **INSTALLATION**

- 3.1 By requesting the Service, the Customer is deemed to have:
 - (a) requested that SCCL complete a SCCL Installation; and
 - (b) agreed to pay the SCCL Installation Fee.
- 3.2 In some cases the Customer will need additional wiring to use the Service. Any Customer requesting an SCCL Installation will be advised if their property requires additional wiring and the cost of SCCL providing the same. By requesting SCCL Installation, the Customer accepts these charges and agrees to pay any and all such wiring charges associated with the SCCL Installation in addition to costs associated with the Service.
- 3.3 SCCL will use its reasonable endeavours to complete the SCCL Installation in one visit, however this may not be possible in all cases. The Customer acknowledges that SCCL is entitled to charge a surcharge of \$65.00 (inclusive of GST) per visit if additional visits to the property are required to complete the SCCL Installation and the Customer agrees to pay any such surcharges.
- 3.4 The SCCL Installation is based on an SCCL technician travelling within a 25km radius from SCCL's base in or near the Customer's location to complete the SCCL Installation. If a Customer is outside a 25km radius of the nearest SCCL base, a travel surcharge may apply as determined by SCCL from time to time. SCCL will advise the Customer if a travel surcharge applies prior to undertaking the SCCL Installation, and the Customer will have the right to approve any such surcharge.

4. **FEES PAYABLE**

- 4.1 The Customer agrees to pay SCCL the quoted price and/or fees for the Equipment, SCCL Installation, surcharges and/or Services based on the then current SCCL price list. All prices are exclusive of Goods and Services Tax unless otherwise stated.
- 4.2 SCCL reserves the right to alter the prices at any time on notice to the Customer.
- 4.3 Where prices have increased or a Service was free and will now be chargeable SCCL will advise the Customer with a minimum of ten (10) working days' notice by posting notification on SCCL's website or by email to the Customer. If the Customer does not accept the price increase or that a formerly free Service is now chargeable, they will have the right to terminate this Agreement without penalty.
- 4.4 The Customer agrees that if it continues to use the Services after notification of the price increase or that a formerly free Service is now chargeable and does not notify SCCL of its rejection within the ten (10) working days' notice period, it will be deemed to have accepted the price increase or that a formerly free Service is now chargeable.



5. **TERMS OF PAYMENT**

- 5.1 SCCL will invoice the Customer for all Services on a monthly basis. The Customer agrees to make payment in full on the date for payment shown on the invoice or before the 20th day of the month following the month in which the invoice was issued ("the Due Date").
- 5.2 The methods of payment accepted by SCCL include CRT, Direct Debit or Cheque.
- 5.3 The Customer acknowledges that no refund will be given on monthly fees paid in advance in circumstances in which this Agreement is terminated for any reason part way through a period for which payment has been made.
- 5.4 If payment is not received by SCCL on or before the Due Date SCCL may:
- (a) charge the Customer interest on the unpaid overdue balance at the rate of 1.5% per month from the Due Date; and/or
 - (b) restrict, limit, or suspend the Services and/or
 - (c) charge a late payment fee.
6. The Customer agrees to indemnify SCCL for any expenses incurred by SCCL (including solicitor/client costs) in the recovery of any monies owing to SCCL by the Customer.

7. **TERMINATION**

- 7.1 The Customer has the right to terminate this Agreement on written notice to SCCL at any time. In the event that the Customer terminates this Agreement pursuant to this clause SCCL is hereby given the right by the Customer to:
- (a) Charge a disconnection fee; and
 - (b) In the event that the Customer does not return the Equipment within ten (10) working days, enter upon any premises where the Equipment is situated and to take possession of and remove the same without being responsible for any damage.
- 7.2 SCCL has the right to terminate this Agreement at any time on three (3) month's written notice to the Customer. In the event that SCCL terminates this Agreement pursuant to this clause SCCL is hereby given the right by the Customer to:
- (a) In the event that the Customer does not return the Equipment within ten (10) working days, enter upon any premises where the Equipment is situated and to take possession of and remove the same without being responsible for any damage.
- 7.3 Notwithstanding clause 7.2, if the Customer:
- (a) defaults in any term or condition of this Agreement; or
 - (b) defaults in any payments; or
 - (c) uses the Service or SCCL Network for any inappropriate activity such as unlawful use or abusive behaviour; or
 - (d) commits any act of bankruptcy; or
 - (e) does any act which would render it liable to be wound up, or a receiver appointed,

SCCL may terminate this Agreement on notice without prejudice to any other rights and payment for all Equipment and /or Services shall immediately become due and payable.

- 7.4 On termination of this Agreement for any reason any and all licences granted by SCCL to the Customer in will terminate and the Customer will have no further rights in relation to the same.



7.5 If the Customer is on a plan that has a data allowance and is in excess of that data allowance, the Customer agrees to pay for any excess data usage as at the date of termination together with any outstanding monies that may be owing to SCCL in respect of the Service.

8. CUSTOMER RESPONSIBILITIES

8.1 The Customer will:

- (a) keep their SCCL account details, username and passwords secure at all times;
- (b) ensure that they take adequate steps to protect their computer/s from Malicious Software and unauthorized access;
- (c) not send or store any information through or on the SCCL Network that contains Malicious Software;
- (d) not use SCCL's Network or services for unlawful purposes and not to use SCCL's Network or the Services to obtain unauthorized access to any person or persons computer system, network or communications system;
- (e) not to use the SCCL Network or the 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; and
- (f) not interfere with the reasonable use of the Services by other customers of SCCL

8.2 The Customer warrants that it is located within New Zealand and will not allow their account or the Services to be used by any party located outside New Zealand at any time. The Customer further warrants and agrees that it may only use the Services for personal or domestic use at the Customer's property unless otherwise agreed in writing by SCCL. The Customer is expressly prohibited from reselling, offering or granted access to the Services to any other person or party at any time.

8.3 The Customer is responsible for any and all the data use associated with and applicable to the Customer's account with SCCL, whether or not it is caused by use or Malicious Software.

8.4 The Customer must notify SCCL immediately in the event that it believes someone has obtained or discovered its password/s and may be using the SCCL Network or the Services fraudulently. SCCL will be entitled to treat any use attributable to the Customer's account on the SCCL Network or the Services as that of the Customer and will in no way be responsible for any unauthorised use of the same. SCCL may charge the Customer a fee if the Customer requests that their account to be investigated or passwords be reset.

8.5 If in the event that SCCL incurs costs as a result of the misuse of a Customer's account, the SCCL Network or the Services, SCCL may pass these costs on to the Customer at its discretion as well as take any legal action that SCCL deems appropriate.

8.6 The Customer acknowledges and consents to SCCL sharing information about the Customer (including private information) with its business partners and any Network Provider to the extent necessary for the Network Provider to provide services (including the Services) to the Customer and to comply with any fraud investigation co-operation or emergency response services requirements and the Customer consents to any Network Provider using such information for these purposes.

8.7 The Customer acknowledges and consents to SCCL sharing information about the Customer (including private information) with its business partners and any Network Provider for the purposes of enabling SCCL, its business partners and any Network Provider to market services (including the Services) to the Customer.

8.8 The Customer acknowledges that:

- (a) any Network Provider does not provide, grant or confer any benefit, right or privilege on the Customer
- (b) the liability of any Network Provider (including its wider corporate group and personnel) is hereby excluded to the maximum extent permitted by law arising from or in connection with Services and this Agreement.



- 8.9 The Customer agrees to be bound by the Enable (End User) Terms. A copy of the Enable (End User) Terms can be found on Enable's website (www.enable.net.nz) and by entering into this agreement, the Customer is deemed to have received a copy of the Enable (End User) Terms and to be bound them.
- 8.10 The Customer acknowledges that the provision of the Services to the Customer by SCCL may result in the Customer using third party equipment and services. The Customer acknowledges that any such use of third party services or equipment in no way create a relationship between the Customer and the third party and the Customer has no such right, benefit or interest in any such third party or the equipment or services provided by any third party.
9. **INDEMNITY**
- 9.1 The Customer indemnifies SCCL against any and all losses, expenses, damages and costs (including costs on a full reimbursement basis and) incurred or ordered against SCCL arising out of or connected in any to any fraudulent use of the SCCL Network and/or the Services.
10. **LIABILITY**
- 10.1 The Customer acknowledges that SCCL's Network and the Service are not guaranteed to be fault free or continuous. SCCL will use its reasonable endeavours to ensure that the SCCL Network and the Services are available for use by the Customer however SCCL takes no responsibility and will not be liable for any loss that is incurred as a result of the Services of SCCL Network not being available for use by the Customer at any time. SCCL assumes no liability for the corruption of any data or information transferred over the SCCL Network.
- 10.2 Apart from what is specifically outlined in this document, SCCL provides no warranties whether expressed or implied, as to the Services, Equipment, or services of any other service provider and as such SCCL will have no liability in respect of the Customers' use of the Services that may infringe any third parties intellectual property or rights.
- 10.3 SCCL shall not be liable for any loss, damage or injury caused by improper or incorrect installation operation or use of the Equipment.
- 10.4 SCCL is not responsible for and does not warrant the capability, performance or suitability of the Equipment notwithstanding that SCCL may supply the Equipment to the Customer. Where possible, SCCL will use its reasonable endeavours to provide the Customer with the benefit of any warranty provided by the manufacturer or supplier of the Equipment.
- 10.5 The liability of SCCL for any loss or damage or injury arising directly or indirectly from this Agreement is limited to the replacement or repair of any defective equipment or damages not exceeding the invoice value of such defective equipment at the option of SCCL.
- 10.6 SCCL shall not be liable to the Customer for any loss of revenue, anticipated profits or consequential or indirect damage or loss of any kind whatsoever.
11. **SECURITY INTEREST GRANTED**
- 11.1 The Customer grants to SCCL a security interest in the Equipment as security for payment of all monies payable from time to time to SCCL by the Customer, and for the performance by the Customer of all the Customer's other obligations from time to time to SCCL, (together the "Customer's Indebtedness and Obligations").
- 11.2 For the purposes of section 36 (1) (b) of the Personal Properties Securities Act 1999 ("PPSA"), and to ensure maximum benefit and protection for SCCL by virtue of section 36(1)(b)(iii) of the PPSA, the Customer confirms and agrees that the Customer intends to and does grant to SCCL as security for the Customer'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"):
- (a) in or to which the Customer has rights; and
 - (b) that has not been supplied by SCCL to the Customer



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

- 11.3 The Customer agrees to do anything that SCCL requires to ensure that SCCL has a perfected security interest and (if applicable) a purchase money security interest in the Equipment.
- 11.4 SCCL may allocate all amounts received from the Customer in any manner it determines including any manner required to preserve any purchase money security interest in the Equipment notwithstanding any purported allocation by the Customer.
- 11.5 The Customer 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 Customer's rights under sections 121, 125, 131 and 132 of the PPSA.
- 11.6 The Customer 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.
- 11.7 The Customer must advise SCCL immediately if the Customer commits any of the acts specified in clause 7.1 or of any action by third parties (including any of its creditors) affecting SCCL's security interest in the Equipment.

12. **INSURANCE**

- 12.1 The Customer is responsible for the Equipment and any other SCCL equipment installed at the Customer's property pursuant to this Agreement. The Customer will indemnify SCCL in respect of any loss or damage to the Equipment and any other SCCL equipment installed at the Customer's property.
- 12.2 The Customer will ensure that the Equipment and any other SCCL equipment located at the Customer's property is insured for its full replacement value (for standard installations the value should be stated as \$1,400.00 plus GST) and, if requested by SCCL have SCCL interest in the insurance policy noted on the insurance policy. The Customer must obtain from SCCL a figure for such cover at the time that this agreement is entered into.

13. **EQUIPMENT**

- 13.1 SCCL grants the Customer a non-exclusive licence to use any and all equipment provided or used by SCCL in the provision of the Services to the Customer for the duration of this Agreement for the purposes of connecting to the SCCL Network and receiving and using the Services. For the avoidance of doubt, title to any such equipment will remain with SCCL at all times unless otherwise expressly agreed in writing. The Customer accepts that by entering into this Agreement the Customer is obtaining the right to use the Equipment in connection with SCCL's provision of the Services only.
- 13.2 The Customer agrees to use its best endeavours to:
 - (a) protect any equipment provided by SCCL from environmental hazards and ensure that such equipment is not altered, repaired, serviced, moved or removed without SCCL's prior written consent; and
 - (b) ensure that the SCCL equipment is not used other than as expressly authorised by SCCL in the provision of the Services.

- 13.3 The Customer will not damage or tamper with any Equipment or any equipment or materials of SCCL or used by SCCL in the provision of the Services to the Customer. The Customer agrees to fully indemnify SCCL for any and all costs, losses and damages including legal costs on a full solicitor/client basis in the event that any Equipment of equipment or materials of SCCL or used by SCCL in the provision of the Services are damaged or tampered with by the Customer.

14. **ACCESS LICENCE**

- 14.1 The Customer hereby authorises, consents and grants SCCL, its agents and assigns a licence to access the Customer's property and to construct, install, inspect, maintain, relocate and replace any and all equipment (including the Equipment) provided by SCCL on the Customer's property for the delivery of the Services at such reasonable times as may be agreed by SCCL its agents and assigns and the Customer.



14.2 Where the Customer is not the owner of the Customer property, the Customer agrees to obtain any required consent or authorisation required from the owner of the Customer's property to enable the Customer's obligation in terms of this clause to be discharged. The Customer agrees to fully indemnify SCCL for any and all costs, losses and damages including legal costs on a full solicitor/client basis suffered or incurred by SCCL due to the Customer's failure or refusal to comply with this clause.

15. **IP LICENCE**

15.1 All Property Rights contained in or relating to any equipment (including the Equipment) or software or other materials forming part of the Services or otherwise provided by SCCL, remains the absolute property of SCCL or its licensors. SCCL grants the Customer a non-exclusive, non-transferable and royalty-free licence to use any SCCL software provided by SCCL for the provision of the Services. The Customer agrees that it will not copy, modify or reverse engineer any software provided by SCCL and will implement any software upgrades requested by SCCL from time to time.

15.2 The Customer agrees to assist SCCL at all times to obtain any and all consents, authorisation or licences required from any Property Rights owner if requested by SCCL to enable SCCL to operate the SCCL Network and/or provide the Services.

15.3 The Customer acknowledges that nothing in this Agreement will confer or be deemed to confer on the Customer any rights or interest in, or licence to use or to permit or cause use to be made of any Property Rights other than as provided in this Agreement.

16. **WAIVER**

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

17. **SEVERABILITY**

17.1 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

18. **REPRESENTATIONS**

18.1 No agent or representative of SCCL is authorised to make any representations, statements, conditions or agreements not expressly confirmed by SCCL in writing and SCCL 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 SCCL collateral to this Contract.

19. **FORCE MAJEURE**

19.1 Neither party will be under any liability to the other for any failure to perform its obligations under this Agreement (including the obligation to provide the Services) in the event that and to the extent that the performance of such obligations are prevented by reason of an Event of Force Majeure.

19.2 If an Event of Force Majeure continues for a period of three (3) months then either party may give notice to the other to terminate this Agreement.

20. **DEFINITIONS**

21. In this Agreement the following terms have the following meanings unless the context indicates otherwise:

"Due Date" is the due date for payment as defined in clause 5.1

"Equipment" means any and all equipment and/or hardware provided by SCCL to enable the Customer to access the SCCL Network and use the Services.

"Event of Force Majeure" means any strike, lockout, riot, industrial action, fire, storm, tempest, act of God, operation of law or other cause beyond the control of that party



“Network Provider” means any host network being used by SCCL for the provision of the Services to the Customer

“Property Rights” means any property rights including copyright, trademarks, design and other intellectual property rights.

“SCCL Installation” means the process which includes:

- (a) A license to use the Equipment for the duration of the Agreement;
- (b) One (1) on-site visit by SCCL technician at the Customer’s property (or the property notified by the Customer to receive the Services) (“the Property”);
- (c) A connection of the Equipment to the Property; and
- (d) Providing reasonable internal cabling between the Equipment and a Customer computer located on the Property.

“SCCL Network” means SCCL’s network and any Network Provider through which SCCL provides the Services

“Services” means the provision of wireless, broadband and/or fibre connection to the internet through the SCCL Network.

“Malicious Software” means Viruses, Trojan horses, Worms, Spy bots, Time bombs, Malware

Date: 29 February 2016