

1. INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:
 "Access Networks" means the Equipment and Services to be provided and installed by NATCOM for Customer to enable access to the Internet in accordance with the terms of this Agreement;
 "Additional Information" means the requirements or additional terms of Service as described in the Application for NATCOM OneSERVICE™. If there is any conflict between these terms and any additional terms, the additional terms will prevail.
 "Application for NATCOM OneSERVICE™" means the Service Agreement form prescribed by NATCOM with Customer's order for the Service and lists the Services to be delivered to Customer;
 "Commencement Date" means the date on which NATCOM installs and delivers the Service to Customer and the Service is available for use by Customer as shown as "Installation Date" under "Equipment Description" in the Application for NATCOM OneSERVICE™;
 "CPE" means any Customer Premises Equipment, including SLAM™, which is installed at Customer's property and which is used to access NATCOM's Service through the Access Networks. This includes any router or switch that is used for this purpose;
 "Customer" means the person or legal entity named or described in the "Customer Details" section of the Application for NATCOM OneSERVICE™ Service Agreement form prescribed by NATCOM and signed by or on behalf of the parties. If there is more than one person, and/or a trustee, it means each person separately and all persons jointly and severally;
 "Effective Date" means the date the Application for NATCOM OneSERVICE™ is executed by the parties and on which it becomes effective;
 "Equipment" means any network infrastructure, hardware, systems and software to be provided and installed by NATCOM to enable use of Services through the Access Networks or other Networks;
 "Guarantor" means the person(s), named or described in the "Guarantor Details" section of the Application for NATCOM OneSERVICE™ Service Agreement form, guaranteeing the obligations of Customer under this Agreement;
 "NATCOM" means NATCOM Communications Corporation Limited, its successors or permitted assigns, or any NATCOM approved third party Service provider or contractor;
 "OneSERVICE" means a trade mark that NATCOM uses to describe its enterprise Internet Service delivered over fibre optic cable, wireless networks or by other means;
 "Party" means NATCOM or Customer as the context requires;
 "Service" means all goods and services of any kind NATCOM provides to Customer as specified and ordered by Customer in the Application for NATCOM OneSERVICE™;
 "SLAM™" means NATCOM's SLAM™ service, which is provided to Customer as part of the Service;
 "Term" means the Minimum Term specified in the Application for NATCOM OneSERVICE™ to be computed starting from the Commencement Date. Customer agrees to use the Service for this Term. The term may also be for as long as the Service is provided to and used by Customer.

1.2 For the purposes of this Agreement:

- (a) Reference to any party includes that party's successors and/or permitted assigns;
- (b) Where more than one person comprises a party to this Agreement, references to and the obligations of that party are joint and severable in relation to each of those persons;
- (c) Words importing the singular number include the plural and vice versa and words importing a gender include all other genders;
- (d) An obligation not to do anything includes an obligation not to suffer, permit or cause any other person to do that thing.

2. GENERAL

2.1 This agreement comes into force when signed by or on behalf of Customer and by a person authorised by NATCOM;
 2.2 Customer authorises NATCOM either before or after signature of this Agreement by NATCOM to insert in the Application the installation date and the serial number and other description details of the Equipment;
 2.3 Service term: The term for the Services pursuant to the Agreement commences on the Commencement Date, and continues in force during the Term unless otherwise determined in accordance with the provisions of this Agreement.

3. PRICES

3.1 Prices for products and Services supplied by NATCOM are set out in the Application for NATCOM OneSERVICE™ for the Term or as otherwise agreed in writing between the Parties.
 3.2 GST: All prices quoted do not include GST unless otherwise stated. GST and any other taxes or duties in relation to the sale and delivery of the products and Services will be added to the prices quoted and payable by Customer.

4. ORDERS

4.1 Placement and Acceptance: All orders for Equipment and Services must be in writing. No order will be binding on NATCOM until accepted in writing by NATCOM or a person authorised on its behalf.

5. DELIVERY

5.1 Delivery Obligations: NATCOM will deliver the Equipment and Services to Customer at the address contained in the Application for NATCOM OneSERVICE™.

6. PAYMENT

6.1 Equipment & Installation: At NATCOM's discretion, all orders for Equipment, Service and Installation must be accompanied by a minimum Payment of the total Equipment and Installation cost, plus the first month's Service fee. NATCOM may vary the minimum Payment requirement and any remainder of the total Payment for Equipment and Installation must be made at the completion of the work ordered as invoiced to Customer.
 6.2 Services: NATCOM will invoice Customer for all Service costs described in the Application for NATCOM OneSERVICE™. Customer will pay to NATCOM the Service costs monthly in advance with the first such payment being made on or before the date Services commence. All Service costs will be paid without deduction or set-off in the manner stipulated by NATCOM.
 6.3 Invoicing: NATCOM will invoice Customer for all Service costs each month for all Services described in the Application for NATCOM OneSERVICE™ supplied to Customer which are to be used during that month (with payment monthly in advance).
 6.4 Delivery of Invoice: NATCOM will email all invoices to Customer at the email address specified in the Application for NATCOM OneSERVICE™. NATCOM can assume any invoice has been delivered when NATCOM's information system states that the invoice has been sent.
 6.5 Non-Payment: Where any payment is not made by the due date, then without prejudice to any other rights or remedies NATCOM may charge interest on the overdue payment (the interest rate is the average 90 day bank bill rate published in New Zealand on the Reuters screen BKBM at 11.00am on the first Business Day of that month plus 3.0 percentage points) from the date on which payment is due until payment is made and may recover from Customer all costs, expenses and other sums reasonably incurred by NATCOM in exercising its rights in respect of Customer's failure to pay.
 6.6 Customer will be liable for costs and charges whether or not the Service was used by Customer or by any liability of NATCOM with or without Customer's authority, knowledge or consent.
 6.7 If Customer breaches any provisions of this Agreement and NATCOM incurs costs as a result, then Customer must pay those costs on demand.

7. NETWORK

7.1 Installation:
 (a) Subject to Customer complying with the terms of clause 9.1, NATCOM will deliver and install the Equipment at Customer's address in accordance with a timetable agreed between the parties;
 (b) Prior to the installation, Customer will back up data on Customer's relevant computers, obtain consent from the Owners of the relevant computers in respect of the installation, and inform NATCOM if any installation by them is likely to invalidate any support arrangements or other functions of Customer's computers;
 (c) Customer agrees that NATCOM will not be liable for any loss of data (including loss of data) suffered by Customer or any other person arising directly or indirectly from the Installation activities of NATCOM and Customer indemnifies NATCOM against any claim of this nature;
 (d) Notwithstanding other terms of this Agreement, NATCOM reserves the right to refuse to install the Equipment as it deems appropriate and at its sole discretion;
 (e) NATCOM will be responsible for determining the manner in which Services are to be provided to Customer. For example, NATCOM may sub-contract other carriers and suppliers to provide part of any Service;
 (f) Target Date: NATCOM aims to fulfil the set-up requirements for the Installation within 10 working days subject to NATCOM receiving Access License, Council and any other approvals as required;
 (g) The Access License is a fee imposed by some site owners on NATCOM for connections to or use of their sites. The fee may vary from site to site and may not be known until an Access License is granted by the site owner. If a fee is imposed, NATCOM will pass this fee onto Customer at cost and Customer will pay that fee as invoiced by NATCOM;
 (h) In the event that NATCOM is unable to obtain rights of access to the site, or if NATCOM receives notice from a site owner at any time that prevents NATCOM from providing Services at that site, NATCOM may by written notice to Customer, terminate the Service or this Agreement and Customer agrees that NATCOM will not be liable to Customer in any way for failure to supply any Service where Customer terminates such Service or this Agreement under this clause.
 7.2 The Equipment will be connected to Customer's own internal hardware, systems and utilities and the provision of access to the Service may be subject to the installation and/or reconfiguration of additional hardware and/or systems.
 7.3 Any improper use of the Equipment, incompatibility of hardware or software or other technical factors may affect, or cause the cessation of, or access to, the Service.
 7.4 Demarcation Point: NATCOM will install the Equipment and Service with the demarcation point being the end of the Ethernet cable supplied by NATCOM to Customer's hardware, or other NATCOM owned CPE. Any equipment or connection after this is Customer's responsibility including any equipment owned by Customer, internal networking, routing or configuration.
 7.5 Unless otherwise specified expressly in the Application for NATCOM OneSERVICE™, the Service provided by NATCOM will not include (i) any Service to reconfigure Customer's computer system, network, hardware or software; or (ii) any installation Service of any hardware or software on Customer's computer systems.
 7.6 Customer agrees to pay NATCOM any reasonable expense that NATCOM incurs due to Service interruptions occurring after the Installation Point.
 7.7 Performance: Unless otherwise specified expressly in the Application for NATCOM OneSERVICE™, the data rate performance of any Service described in the Application for NATCOM OneSERVICE™ is stated as burstable PIR (Peak Information Rate) which is the maximum speed that NATCOM commits to transferring data across the Access Network. NATCOM cannot guarantee the performance of any Services provided. All Services are provided on a best-effort basis.

8. SUPPORT

8.1 Faults: NATCOM does not guarantee that the Access Networks and Service will be fault-free but will use reasonable endeavours to correct any faults or errors with the Access Networks and Service notified to it by Customer in accordance with the terms of this Agreement.
 8.2 NATCOM cannot guarantee the performance of internet connectivity outside of the jurisdiction of its own network.
 8.3 If a fault occurs due to weather conditions, force majeure or any reason beyond NATCOM's reasonable control, any cost associated with the repair of such fault is Customer's responsibility.

9. CUSTOMER'S RESPONSIBILITIES

9.1 Specific Responsibilities: Customer will:
 (a) Grant NATCOM full, free and safe access to the installation site and the Access Networks to deliver, install, test, maintain, repair, replace or upgrade the Equipment;
 (b) Provide NATCOM with such information and other assistance as NATCOM may reasonably require for the purposes of this Agreement;
 (c) Ensure that the Equipment is only serviced and maintained by NATCOM's approved staff or contractors;
 (d) Immediately notify NATCOM of any faults or defects with the Access Networks;
 (e) Follow NATCOM's reasonable directions about the use of the Service and any modifications which Customer may need to make to the Equipment to use the Service;
 (f) Comply with all of NATCOM's Acceptable Use Policy (AUP), as can be found on NATCOM's website (www.natcom.co.nz), relating to the Service, as may be changed by NATCOM from time to time.
 (g) Comply with all of NATCOM's Reasonable Use Policy (RUP), as can be found on NATCOM's website (www.natcom.co.nz), relating to the Service, as may be changed by NATCOM from time to time.

10. CPE (WHERE APPLICABLE)

10.1 NATCOM may provide Customer with CPE to access the Service.
 10.2 NATCOM will repair any defect in the CPE or will replace any defective CPE at its sole discretion
 10.3 In respect of the CPE NATCOM provides to Customer:
 (a) NATCOM will at all times retain all ownership rights to the CPE;
 (b) NATCOM can take the CPE back at any time if Customer breaches any terms of this agreement. NATCOM will give Customer 3 working days notice of its intention to do so;
 (c) Customer is responsible for any loss, theft of or damage to the CPE (excluding any normal wear and tear) and for insuring the CPE at all times by a reputable insurance company and will make sure NATCOM's interest is noted on the policy;
 (d) Customer will not sell, lease, dispose of, lend or otherwise part with possession of the CPE;
 (e) Customer will not use the CPE for any purpose other than to access the Service; and
 (f) Customer will not modify, tamper with or otherwise interfere with the CPE.

11. RISK AND LIABILITY

11.1 Risk: The risk of any loss or damage to or deterioration of the Equipment passes to Customer when the equipment is delivered and it is Customer's obligation to ensure that the equipment is stored securely and appropriately. Customer will be liable to pay for all Equipment supplied by NATCOM which is subsequently damaged, stolen, otherwise misappropriated or which suffers any loss prior to installation and use.
 11.2 Title: Ownership of the Equipment will remain with NATCOM until NATCOM has received from Customer payment in full for that Equipment.
 11.3 Force Majeure: Neither party will be liable for any act, omission or failure to fulfill its obligations under this Agreement to the extent that such act, omission or failure arises from any cause beyond its reasonable control provided that the party unable to fulfill its obligations immediately notifies the other party in writing of the reasons for its failure to fulfil its obligations and the effect of such failure and uses all reasonable efforts to avoid or remove the cause and fulfill its obligations.
 11.4 Limitation of Liability:
 (a) NATCOM disclaims all conditions and warranties (statutory, express or implied), including, without limitation, the implied warranties as to: (i) the title, fitness for a particular purpose, merchantability, accuracy or standard of quality of a Service (or any part thereof); (ii) the results or data that may be obtained from a Service; or (iii) that a Service will be uninterrupted, error free, virus free, reliable or secure.
 (b) In no event will NATCOM be liable for any loss incurred by or any damage however caused to Customer or any person arising out of or in connection with this Agreement or a Service provided or omitted to be provided under this Agreement, whether in contract, tort, equity, under statute or otherwise arising from the relationship between the Parties and, whether direct or indirect, consequential, special, or contingent, and whether foreseeable or not, including without limitation any financial loss or loss of business, profit, revenue, savings, data, contract, goodwill or use of any Equipment.
 (c) Customer agrees that this Agreement will not create any claim or cause of action for any third party, nor will NATCOM be responsible for any third party claims against Customer. Customer hereby indemnifies NATCOM against any claim brought by any third party against Customer or NATCOM in relation to the provision of the Access Networks and Services.
 (d) If Customer maintains that notwithstanding clause 11.4(b) and clause 11.4(c), that Customer has a valid claim against NATCOM arising out of this Agreement, it must be notified in writing to NATCOM within 30 days of the incident giving rise to such claim or Customer will be deemed to have waived its rights in respect of such claim.
 (e) Nothing under this clause will limit or exclude NATCOM's liability which is not permitted to be limited or excluded under the laws of New Zealand.
 (f) If, despite the other provisions of this Agreement NATCOM is found to be liable for a claim, virus free, reliable or secure, series of incidents arising from a common cause immediately preceding the first of such incidents) giving rise to that claim.
 (g) NATCOM's shareholders, directors, employees, agents, third party Service providers and contractors will have the benefit of the rights, exclusions and limitations of the provisions in this clause as if such provisions were expressly for their benefit.
 (h) Customer acknowledges that if they are obtaining the Equipment and Services for the purposes of a business then the Consumer Guarantees Act 1993 does not apply to the provision of Equipment or Services.
 11.5 Reliance: In performing its obligations under this Agreement, NATCOM will be entitled to rely upon any instructions, authorisations, approvals or other information provided to it by Customer.

12. RETURNS

12.1 Cancellation of Orders and Credits: Orders, once accepted may not be cancelled and any equipment may not be returned to NATCOM for credit.
 12.2 Faulty or Defective Equipment: Equipment which NATCOM determines in its absolute discretion are faulty or defective and unable to be used due to any act or omission by NATCOM or its employees or the manufacturers of the Equipment, and which are returned to NATCOM and in accordance with any existing warranty on the Equipment.

13. TERMINATION

13.1 NATCOM may terminate the Service or this Agreement by giving written notice to Customer (but without prejudice to any other rights or remedies available) in the following circumstances if:
 (a) Customer breaches any of the provisions of this Agreement and fails to remedy such breach (where capable of being remedied) within 10 working days after having been given written notice to do so, or if the breach is a material breach incapable of being remedied; or
 (b) Customer fails to pay NATCOM a charge by its Payment Due Date and the outstanding payments are not in dispute;
 (c) Customer is unable to pay its debts as they become due, commits an act of insolvency or bankruptcy, becomes bankrupt, goes or is put into liquidation (other than solely for amalgamation or reconstruction), enters into a composition or other arrangement with its creditors or if a receiver, receiver and manager, statutory manager or administrator is appointed over any part of Customer's assets;
 (d) A third party Service provider, carrier or supplier to NATCOM does anything that prevents NATCOM from supplying the Service to Customer on a commercially viable basis. This may include for example, the loss of access rights to the building where NATCOM supplies Service to Customer. Customer acknowledges that NATCOM will not be liable to Customer in any way for failure to supply any Service where NATCOM terminates such Service or this Agreement under this provision.
 13.2 At the expiry or earlier termination of this Agreement:
 (a) NATCOM will be entitled to remove all components it owns in respect of the Access Networks and Service;
 (b) Customer will return to NATCOM at its offices any CPE and equipment which belongs to NATCOM, or make arrangements for NATCOM to collect it from Customer's property. If Customer fails to return the CPE within 30 days, NATCOM may come on to Customer's property to remove the CPE (and Customer will pay NATCOM's costs) or NATCOM may invoice Customer and Customer will pay for the full retail cost of the CPE or any compatible replacement. Customer must also meet any repair or replacement costs if the CPE is damaged, lost or destroyed while under Customer's control.
 (c) Customer will return to NATCOM any documentation or other information or data relating to the Access Networks and Service;
 (d) Customer will continue to comply with any provisions of this Agreement that are intended to survive expiry or termination, including, without limitation clause 14; and
 (e) Early Termination Penalty: If this Agreement is terminated for any reason before the expiry of the Minimum Term, 95% of the charges corresponding to the unexpired portion of the Minimum Term will immediately become due and payable to NATCOM.

14. CONFIDENTIALITY

14.1 Confidentiality: Each party will treat the existence of this Agreement and all information made available by the other party in connection with this Agreement as strictly private and confidential and will ensure that all employees and agents of that party do the same.
 14.2 Notwithstanding any other provision in this Agreement, NATCOM may disclose the terms of this Agreement to its affiliated or related companies, solicitors, auditors, insurers and accountants.

15. SUSPENSION OF SERVICES

15.1 NATCOM may suspend, disconnect or discontinue any Service in whole or in part at any time without notice and without compensation if in NATCOM's reasonable opinion:
 (a) It is necessary to safeguard the provision of a Service or the integrity of any Network;
 (b) Any Network or Equipment fails or requires modification or maintenance;
 (c) There is or has been unauthorised, unlawful or fraudulent use of any Service or Customer's use of any Service or Equipment is causing or may potentially cause damage or interference to any Software, Network or Equipment or the contravention of any Act or statutory requirement;
 (d) It is necessary to comply with a direct order or request of any government authority or competent authority;
 (e) Customer does not comply with any of the terms of this Agreement; and
 (f) Service costs and charges will still apply during the period of any suspension. NATCOM may charge for reconnection or resumption of a Service and require revised terms following suspension, disconnection or discontinuance.

16. MISCELLANEOUS

16.1 Assignment - Consent Required: Customer will not assign or transfer its rights or obligations under this Agreement without the prior written consent of NATCOM which will not be unreasonably withheld or delayed.
 16.2 Optional Assignment: NATCOM may assign or transfer all or any part of its rights, interests or obligations under this Agreement to any other person which will be notified to Customer in writing giving 30 days notice of any such assignment. Each assignee or transferee of NATCOM will have the same rights against Customer as NATCOM has under this Agreement.
 16.3 Variation of Terms: NATCOM may vary the terms of this Agreement at any time. Such variation will become effective immediately and continued use of the Service by Customer after the effective date of variation will constitute acceptance of the variation by Customer. NATCOM will inform Customer of any change by providing relevant information on its website or by notifying Customer by email. NATCOM's latest Service terms & conditions are available at www.natcom.co.nz. Except as otherwise provided, this Agreement may not be varied, except by agreement in writing between the parties.
 16.4 Credit Check: NATCOM may, at any time, perform a credit reference check and/or a trade reference check with respect to the circumstances or status, whether financial or otherwise, of Customer, its Directors or the Guarantor named in the Application for NATCOM OneSERVICE™.
 16.5 The Privacy Amendment (Privacy Section) Act 2000:
 (a) Customer, its Directors and Guarantors authorise NATCOM to collect, retain and use personal information about Customer and/or the Guarantor ("the Information"), including directors in the case of a limited liability company or trustees in the case of a trust;
 (b) The Customer, Directors and Guarantors authorise NATCOM to provide and request the Information to and from any person for assessing Customer's, Directors and/or Guarantors credit worthiness, administering the financing or enforcing NATCOM's rights of this Agreement, Equipment and Services provided by NATCOM or Third Parties or to credit agencies for the purpose of maintaining effective credit records;
 (c) Customer irrevocably acknowledges: (i) that the Information shall be deemed to be held by NATCOM, Third Parties and by other persons for the purposes described above; (ii) that where the Information can be readily retrieved, Customer shall have access to it, the right to request correction and the right to be notified of action taken in response to any such request, subject to payment of any reasonable charge.
 16.6 Third Party: Customer acknowledges that no third party whose network or Services NATCOM uses to supply Services to Customer (nor any officer, employee, contractor or agent of such third party) is in any way liable to Customer in connection with NATCOM Services. This clause is intended to confer a benefit which those third parties can enforce.
 16.7 Invalidity and severance: If any provision of these terms is unlawful and unenforceable, it will be severed from these terms to the extent it is unlawful and unenforceable. The rest of these terms will remain in force. Each term of every agreement Customer has with NATCOM is separately binding. If for any reason either party cannot rely on any term, all other terms remain binding.

17. ENTIRE AGREEMENT

17.1 Entire Agreement: The parties acknowledge that this Agreement entered into between the parties constitutes the entire contract between the parties and replaces all prior agreements, representations and understandings with respect to the subject matter of this Agreement.

18. GOVERNING LAW

18.1 New Zealand Law Applies: The parties agree that this Agreement shall be governed by the laws of New Zealand and that the parties will submit to the exclusive jurisdiction of the New Zealand Courts.