



Santa Clara Pueblo Housing Authority

201 Road Runner Road, Espanola NM 87532-1313

Phone: (505)-753-6170 Fax: (505) 257-3715

info@scphousing.org – www.scphousing.org

Wireless Internet Service Agreement

Unit #: _____ Monthly fee: _____ First month: _____ Second month: _____

Total Due: _____ Late charge: **\$10.00**

Please circle where you would like invoices to be sent: Email Mail Both

Applicant

Tenant: _____ Phone: _____

Physical Address: _____

Mailing Address: _____

Email Address: _____

Emergency Contact

Name: _____ Phone: _____

Relationship: _____

Checklist:

_____ ACH form

_____ Payment (1st month _____, 2nd month _____, Installation _____)

Terms and Conditions

1. Introduction.

Terms and Conditions of Service. This Agreement for Wireless Internet Service is made and entered into this _____ day of _____, 20____ by and between Santa Clara Pueblo Housing Authority Wireless Internet ("SCPHA-WI") (Owner), whose address is 201 Road Runner Road, Espanola, New Mexico 87532 and _____, a tenant whose address is _____ or (60 Dusty Plaza, Building _____, Unit _____) Espanola, NM 87532 ("Customer") this document governs the terms and conditions for the Wireless Internet access service. By using SCPHA-WI, you acknowledge and agree to the terms and conditions of this Agreement ("Terms").

2. Changes in Terms. SCPHA-WI may change the Terms on not less than FIVE days' written notice by email or by United States mail. Your use of SCPHA-WI Service after the effective date of any change in the Terms shall constitute your acceptance of and agreement to such change.

3. Charges, Billing, and Payment.

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Rates. The current monthly rate for SCPHA-WI Service is: \$_____

_____ 3 megs @ \$35.00
_____ 5 megs @ \$50.00
_____ 10 megs @ \$65.00

plus, the installation and equipment of \$_____. Charges for usage of the internet are billed ONE MONTH in advance. The basic monthly rates and usage do not include taxes or governmentally required surcharges, for which you are also responsible in the future.

Billing. SCPHA-WI will bill you monthly. The fixed monthly rate is payable in advance on or before the first day of SCPHA-WI's monthly billing cycle. The installation and equipment charges of \$_____ are divided into 6 monthly payments or can be paid up front.

Payment. You shall pay upon demand all amounts due to SCPHA-WI. Checks for payment should be made payable to "**Santa Clara Pueblo Housing Authority**" and deliver to **201 Road Runner Road, Espanola, NM 87532**, via money order, check or automated clearing house (ACH).

Billing Disputes. Unless you notify SCPHA of an error in SCPHA-WI's billing within thirty (30) days after it first appears on your account statement, the statement will be deemed accepted by you for all purposes, including resolution of inquiries made by you. You release SCPHA and SCPHA-WI from all liabilities and claims resulting from any billing error not reported to SCPHA within thirty (30) days after the date of the statement on which it appears.

Late Payment; Non-Payment. If SCPHA does not receive the full amount you owe for SCPHA-WI Service and related fees within five (5) days after the date of SCPHA-WI's statement, you shall owe SCPHA \$10.00 on the outstanding balance. A written or verbal notification will be given when late fees are applied. You shall also be liable for all costs of collecting any unpaid balance on your Internet service account(s) with SCPHA. **In the event of Non-Sufficient Funds (NSF), dishonored or returned check, you agree to pay SCPHA the current bank rate charge.** If any amount remains unpaid for more than thirty (30) days, SCPHA shall have the right to terminate your SCPHA-WI Service. **If such Termination occurs an Eighty Dollar (\$80.00) Reconnection fee will be applied to restore services.**

4. No Liability. SCPHA makes no representations, warranties, or promises as to, and you must bear the risk of relying on, the accuracy, completeness, or usefulness of any Content. As a matter of policy, SCPHA does not screen or filter any Content and has no obligation to monitor Content. Accordingly, neither SCPHA nor any of its Vendors shall have any liability whatsoever for any action or inaction by SCPHA or any of its Vendors with respect to Content.

Third Party Conditions of Use. Content is provided by persons and entities not under the control of SCPHA, and such other Internet service providers have their own terms and conditions of use. Violation of any of those terms of use may subject you to termination of SCPHA-WI Service.

5. Content Rights. SCPHA and its Vendors reserve the right (but shall have no obligation) to

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monitor Content and to remove Content that SCPHA or any of the Vendors deems unacceptable, undesirable, or in violation of this Agreement. SCPHA and its Vendors reserve the right to disclose any Content and to identify the responsible customer as may be required by law, or to operate SCPHA Internet Service properly, or to protect itself or its other subscribers.

5. Parental Guidance. Content may include material inappropriate for minors; SCPHA recommends that you guide your minors' use of the SCPHA-WI Service directly and/or consider using commercially-available tools that enable you to restrict access to certain Internet areas and other features of the SCPHA-WI Service that may be inappropriate for minors, at your sole cost and risk. SCPHA makes no warranties with respect to such tools.

6. Appropriate and Acceptable Use. SCPHA reserves the right to terminate your SCPHA-WI Service immediately without notice if, in SCPHA's sole discretion, you do not use SCPHA-WI Service in an appropriate and lawful manner.

7. Security. Because the Internet is a resource shared among many users, there is a risk that you could be subject to a variety of security breaches, including but not limited to eavesdropping, denial of service attacks, and receipt of corrupted files or viruses. This means that other people may be able to access, monitor, and/or alter your files, data, or other traffic sent or received using SCPHA-WI Service, or negatively affect your ability to use the service, or both. Any information sent by you over SCPHA-WI Service is sent at your sole risk, and SCPHA shall have no liability whatsoever for any claims, losses, actions, damages, suits, or proceedings arising out of or otherwise related to such actions.

8. Limited Warranty. SCPHA shall use commercially reasonable efforts to provide you high quality SCPHA-WI Service, but SCPHA does not guarantee that you will be able to access the SCPHA-WI Service at a particular speed, time, or location or that SCPHA will have adequate capacity for the SCPHA-WI Service as a whole or for particular purposes. Interruptions in SCPHA-WI Service may occur due to scheduled maintenance or failure of hardware or software, as well as acts of God. SCPHA does not warrant that any data or files sent by or to you will be transmitted in uncorrupted form. All representations, warranties, endorsements and conditions of any kind, express or implied, including, without limitation, fitness for a particular purpose, merchantability, and those arising from a course of dealing or usage of trade, are hereby excluded. SCPHA would make every effort to provide you at least 24-hours' advance notice by email of scheduled maintenance that could interrupt all or some of SCPHA-WI Service.

9. Limitation of Liability. The following limitations apply to the acts, omissions, negligence, and gross negligence of SCPHA, its officers, employees, agents, contractors, or representatives, which acts, omissions, negligence, or gross negligence, but for this provision, would give rise to a cause of action against SCPHA in contract, tort, or any other legal doctrine. Your sole and exclusive remedies under this Agreement are as expressly set out in this Agreement.

10. Service. SCPHA shall not be liable to you or anyone else for any special, indirect, or consequential damages, including without limitation loss of anticipated profits or other economic loss, personal injuries, or property damage arising out of interruptions, errors, or defects, in

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installation, provision, termination, maintenance, repair, or restoration, of SCPHA-WI Service, however caused, or for damage to, loss of, or destruction of, any software, files, or data (collectively, a "Loss"). **SCPHA's liability for direct damages for a Loss caused by the ordinary negligence of SCPHA shall not exceed the amount you paid for the affected service for the period of time it was affected. A written notice is required.** SCPHA's liability for any direct damages for a Loss caused by the gross negligence on the part of the Company shall be limited to \$300. SCPHA shall not be liable for any Loss due to causes beyond its control.

Software. SCPHA shall not be liable to you or anyone else for any special, indirect, or consequential damages, including without limitation loss of anticipated profits or other economic loss, personal injuries, or property damage, for any faulty software that may be provided by SCPHA. SCPHA's entire liability to you for defects in software provided by SCPHA, and your exclusive remedy, shall be limited to replacement of the software.

Intellectual Property Rights. SCPHA shall not be liable to you or anyone else for any losses, claims, damages, expenses, liabilities, or costs (including legal fees) resulting directly or indirectly out of, or otherwise arising in connection with, any allegation, claim, suit, or other proceeding based upon a claim that your use of SCPHA-WI's Service or use by a third party infringes the copyright, patent, trademark, trade secret, confidentiality, privacy, or other industrial or intellectual property rights, proprietary rights, or contractual rights of any third party.

11. Indemnification. You agree that upon request by SCPHA you will defend, indemnify, and hold harmless SCPHA, its officers, directors, agents, employees, and Vendors, from all claims, liabilities, and expenses, including attorneys' fees, that arise from your breach of this Agreement, including without limitation:

Any breach of this Agreement by you or anyone you permit to use your SCPHA-WI Service ("Users");

Your or any Users' use of SCPHA-WI Service or the Internet for the placement or transmission of any information, software, or other materials on the Internet;

Your acts or omissions or those of your agents or contractors in connection with, among other things, the installation, maintenance, presence, use, or removal of equipment or software not provided by SCPHA connected or to be connected to SCPHA-WI Service; and

Claims for infringement of any third party proprietary right, including copyright, patent, trade secret, and trademark rights, arising from the use of any services, equipment, or software not provided by SCPHA.

SCPHA reserves the right, at its own expense, to assume the exclusive defense and control of any matter for which SCPHA is entitled to indemnification hereunder.

12. Termination.

Your Voluntary Termination

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Notice Required. In order to terminate your SCPHA-WI Service, you must contact SCPHA by calling us or written notice to SCPHA via United States mail to 201 Road Runner Road, Espanola, NM 87532 or via email. Effective upon SCPHA's receipt of notice of termination, and not before, SCPHA shall stop charging you for SCPHA-WI Service, but must be submitted no less than thirty (30) days prior to the next billing cycle.

Refunds. Upon termination of SCPHA-WI Service, SCPHA will refund any unused portion of fixed monthly rates paid in advance, except in the case of early termination of a SCPHA-WI Service arrangement requiring a minimum number of months' service in return for a discounted rate, in which event the regular (non-discounted rate) shall be applied to the months of service furnished by SCPHA, in order to determine what, if any, balance remains for refund.

Involuntary Termination for Misuse or Nonpayment. In the event SCPHA exercises its right to terminate SCPHA-WI Service to you in accordance with the provisions of this Agreement, it may terminate SCPHA-WI Service with immediate effect without prior notice, and SCPHA shall not be obligated to refund any prepaid amounts.

Payment upon Termination. Upon termination of SCPHA-WI Service for any reason, all charges incurred for SCPHA-WI Service, together with interest owed for late payments or equipment, if any, shall become immediately due and payable, and the provisions of Section 3(5) shall apply as to any amounts not immediately paid and as to costs incurred in collecting such amounts.

13. **Entire Agreement.** This Agreement contains and refers to the entire agreement of the parties relating to the rights granted and obligations assumed in this Agreement. Any oral representations or modifications concerning this Agreement shall be of no force and effect unless contained in a subsequent written modification signed by both parties to this Agreement or unless modified pursuant to Section 2.

14. **Headings.** The headings in this Agreement are for convenience of reference only and shall not be given any effect in the interpretation of this Agreement.

15. **No Waiver.** No course of dealing or failure of either party to enforce strictly any right, term, or condition of this Agreement shall be deemed or construed as a waiver of such right, term, or condition.

16. **Severability.** If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect.

17. **Equipment.**

Minimum System Requirements. In order to run SCPHA-WI Internet Service, your computer must meet the minimum specifications set forth in Exhibit A at the end of this Addendum. In addition, successful installation requires that you have your original copy of your operating system software on CD-ROM, diskette, or other medium. You represent and warrant

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that you meet these requirements.

Wireless Modem. You must connect a SCPHA wireless modem to your computer in order to use the SCPHA-WI Service.

Wireless Router. If you intend to provide shared access to other wireless devices, a SCPHA-WI wireless router must be installed.

Equipment Compatibility. You shall be solely responsible for the installation, operation, maintenance, use, and compatibility (with SCPHA-WI Service) of your computer system and related equipment and any wireless-related equipment or software not provided by SCPHA. In the event that your equipment or software not provided by SCPHA impairs your use of SCPHA-WI Internet Service, (i) you shall nonetheless be liable for payment of all SCPHA-WI Service charges; and (ii) SCPHA shall not be responsible for meeting any service specifications or performance levels generally applicable to the SCPHA-WI Wireless Internet Service.

Equipment Furnished by SCPHA; Limited Warranty. SCPHA shall not be responsible for the ongoing operation of the Wireless Modem or other equipment furnished by SCPHA, and SCPHA shall have no obligation to maintain such equipment, nor any obligation to secure maintenance services on your behalf. All equipment purchased from SCPHA is subject to the terms and conditions set forth in the manufacturer's warranty or end-user license packaged with such equipment. SCPHA makes no representations or warranties, express or implied, regarding such equipment.

18. SCPHA Wireless Service Availability.

Geographic Availability. You acknowledge that due to the nature of the wireless internet service technology, your services may have some downtime, SCPHA reserves the right to terminate this Agreement without liability to you if SCPHA at any time is not able to provide, repair, or maintain SCPHA-WI Service to your premises; provided, however, that SCPHA shall refund any pre-paid charges for the SCPHA-WI Service that it terminates.

Circuit Speed. All speeds referenced, verbally or written, are based on sync rate and are "best effort" and may vary and are not guaranteed.

19. Limited Warranty.

The actual transmission speeds you experience using SCPHA-WI Internet Service may vary from the transmission speeds that you might expect, due to such factors as the length and gauge of the telecommunications line serving your premises and other operational characteristics of the facilities and equipment used for the SCPHA-WI Wireless Internet Service. Speed also depends on the bottlenecks experienced upon the wider network architecture of the Internet itself. For these reasons, SCPHA does not guarantee that you will experience any particular performance level (throughput speed).

However, SCPHA shall make every commercially reasonable effort to deliver to you the highest possible quality of wireless internet service.

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This limited warranty does not apply (i) to issues involving your computer or software; (ii) if your equipment has been subjected to unusual physical or electrical stress, misuse, neglect, accident, or abuse, or damaged by any other external cause; or (iii) any person other than SCPHA or its contractor has installed the SCPHA-WI Wireless Internet Service and related equipment.

This limited warranty shall be in lieu of all other express or implied warranties, including without limitation, warranties of merchantability and fitness for a particular purpose.

20. Activation at Fixed-location. SCPHA-WI Wireless Internet Service requires a technical activation on your home premises. SCPHA shall, at a time mutually agreed, install the necessary equipment on the interior/exterior of your premises and shall test the antenna intended to use for SCPHA Wireless Internet Service. The service antenna may not be moved to different premises. Transferring the service to a different place within a location may require further activation work by SCPHA or its agents, contractors, or representatives, at additional cost. If you change locations, you shall notify SCPHA, pursuant to the provisions of Section 12 of this Agreement, to terminate your service.

21. Installation by SCPHA.

Back-Up Requirements. The installation, use, inspection, maintenance, repair, and removal of the wireless equipment may result in service outage or potential damage to your computer. You are solely responsible for backing-up all existing computer files by copying them to another storage medium prior to installation of the wireless equipment, and prior to any inspection, maintenance, repair, or removal of the wireless equipment.

Access; File Modification. If you request SCPHA to install SCPHA Wireless Internet Service, you authorize SCPHA to enter your premises at a mutually agreed time, open your computer, install hardware and software, re-boot the system, test the service, and perform similar functions necessary for a successful installation. As part of the installation process for the wireless software, as when most software is installed on a computer, system files on your computer, such as INI, BAT, SYS, and DLL files, may be modified or deleted. SCPHA does not represent, warrant, nor covenant that such modifications or deletions will not disrupt the normal operations of your computer.

Limitation of Liability. SCPHA and its employees, agents, contractors, and representatives shall have no liability whatsoever for any (i) damage to or loss or destruction of your software, files, or data arising out of installation by SCPHA; or (ii) damage to your computer or peripheral equipment caused by SCPHA in the course of installation, other than the cost to repair or replace such hardware; or (iii) disruption of your normal telephone service during the installation process; or (iv) impacts upon or loss of any computer or software vendor warranty relating to the opening of your computer in the course of installation.

Governing Law. This agreement shall be deemed to have been formed on the Santa Clara Pueblo, which shall be the appropriate legal forum for any dispute.

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Sovereign Immunity. The Owner doesn't waive any of its immunity and as to disputes arising from this agreement. Nothing in this Agreement shall be construed or interpreted to affect a waiver of the Owner's sovereign immunity.

22. Installation by You or Others. SCPHA does not allow, represent, warrant, or covenant that installation by you or a third party chosen by you will enable you to successfully access, operate, or use SCPHA Wireless Internet service.

23. Appropriate Use. SCPHA reserves the right to terminate your SCPHA Wireless Internet Service immediately without notice if, in SCPHA's sole discretion, you do not use SCPHA Wireless Internet Service in an appropriate and lawful manner. You agree not to use or to allow others to use SCPHA Wireless Internet Service, directly or indirectly, to:

24. Violate any of the provisions of Section 6 of this Agreement; or

Disrupt, abuse, or cause degradation of service in the SCPHA's backbone network nodes or network services or the network nodes of other SCPHA.net users; or

Resell the SCPHA Wireless Internet Service, or bandwidth, or use the service for operation of an Internet service provider business or for any other business enterprise in competition with SCPHA; or

Redistribute your residential SCPHA Wireless Internet Service to anyone not a member of your household.

Access any computer, software, data, or any confidential, copyright-protected, or patent-protected material of any other person, without the knowledge and consent of such person.

If you engage in any of these activities, SCPHA may immediately terminate your SCPHA Wireless internet Service. This Section 24 shall not in any way limit SCPHA's rights of termination pursuant to Section 12 of this Agreement.

25. Security.

Firewall, Anti-virus Recommended. It is your responsibility to safeguard your computer system, through appropriate means (e.g., using commercially available software or hardware) from theft, unauthorized use, or system corruption. If you fail to secure your system properly and that causes any detriment to the network, SCPHA may immediately terminate your SCPHA Wireless Internet Service. SCPHA HIGHLY recommends that you purchase and install a commercial firewall package and anti-virus package. SCPHA shall have no liability whatsoever for any claims, losses, actions, damages, suits, or proceedings resulting from or arising out of or otherwise relating to your failure to safeguard the security of your system, software, and data.

FTP/HTTP Server Setup. Certain applications that you may use will, by their nature, permit other Internet users to gain access to your computer. These applications include, for example, your use of your computer as a server to allow others to download files using FTP or to access content you placed on a Web site using HTTP. You are permitted to run such

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applications for your personal use and within the limitations of Sections 6 and 27 of this Agreement, provided that you take the appropriate security measures and you assume all risk of security breaches such as those described in Section 25.1 above. SCPHA shall have no liability whatsoever for any claims, losses, actions, damages, suits, or proceedings resulting from or arising out of or otherwise relating to your use of such applications, including, without limitation, damages resulting from other Internet users' having access to your computer.

26. Limitation of Liability for Equipment.

SCPHA shall not be liable for any direct, special, indirect, or consequential damages, including without limitation loss of anticipated profits or other economic loss, personal injuries, or property damage, for defective equipment provided by SCPHA.

Your sole remedy in the event of any defective equipment shall be to seek redress from the manufacturer in accordance with the terms and conditions set forth in such manufacturer's warranty or end-user license packaged with such equipment. Do not ship defective equipment to SCPHA. Any equipment SCPHA delivers to you hereunder may have additional restrictions on its use required by the manufacturer. You are solely responsible for adhering to any and all such restrictions and requirements.

27. Internet Protocol Address. You shall have no ownership interest in any Internet Protocol address provided by SCPHA. SCPHA shall retain ownership of all such addresses and, upon termination of this Agreement, you shall no longer have access to or use of any such address.

IN WITNESS WHEREOF, the parties hereto have set their hand and seals on the date opposite their signatures.

SANTA CLARA PUEBLO HOUSING AUTHORITY

By: _____
Francisco Simbana, Executive Director

Date: _____

CUSTOMER

By: _____

Date: _____

Applicants initials: _____

Date: _____



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EXHIBIT A

THE SCPHA-WI WIRELESS INTERNET SERVICE ADDENDUM MINIMUM SUPPORTED SYSTEM REQUIREMENTS (1)

Windows System:

Microsoft Windows XP 7 Service Pack 2 PC with 300 megahertz or higher processor clock speed recommended; 233 MHz minimum required (single or dual processor system);* Intel Pentium/Celeron family, or AMD K6/Athlon/Duron family, or compatible processor recommended 128 megabytes (MB) of RAM or higher recommended (64 MB minimum supported; may limit performance and some features) 1.5 gigabytes (GB) of available hard disk space Ethernet card with RJ45 connector

Macintosh System:

Mac OS 9 to OS X 10.3 (excluding OS X 10.0 - 10.0.4) Power PC Processor 64MB of RAM (128MB recommended) 100MB of free disk space Ethernet support, via AAUI port with RJ45 connector transceiver, communications slot or PCI slot equipped with an Ethernet card and RJ45 connector or built-in RJ45 connector

- 1) These minimum requirements may not be adequate for all wireless downloads, features, and functions that you may expect or desire.

EXHIBIT B

to

THE SCPHA-WI WIRELESS INTERNET SERVICE ADDENDUM

SYSTEM SETTINGS

IP Address: _____
VPI: _____
VCI: _____
SUB NET MASK: _____
GATEWAY Address: _____
DNS Address: _____

If you use the above SCPHA-WI provided settings, you acknowledge that you have read and agreed to THE SCPHA-WI WIRELESS SERVICE AGREEMENT, AND ALL ADDENDUMS, EXHIBITS, AND ATTACHMENTS THERETO.

CUSTOMER

Signature

Print Name

Date

Applicants initials: _____

Date: _____