

# Scopious Terms of Service

These Scopious Terms of Service ("Terms") are between Scopious IOT Limited ("Scopious", "our") and you our Customer ("Customer", "you") and are to be read in conjunction with the Scopious Service Level Agreement and Scopious Privacy Policy. By accessing or using our services you agree to be bound by these Terms. If you do not agree to these Terms, you are prohibited from using our services.

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## 1 Our Services

Scopious provides the following services to our Customers.

### Platform Services

Scopious operate a LoRaWAN® Network Server and an Internet of Things (IoT) Platform that together form the Platform Services.

- **LoRaWAN Network Server**  
Scopious provide a LoRaWAN Network Server for Customers to connect their LoRaWAN Gateways and Devices to. The network server is owned and maintained by The Things Industries, and runs in a cloud in Sydney, Australia. Scopious has an agreement with The Things Industries for the use of their network server.
- **IoT Platform**  
Scopious provide an IoT platform as hosted software as a service (SaaS) for Customers to manage their IoT gateways and devices. The Platform is developed, owned, and maintained by Scopious, and runs in data centres in New Zealand.

### Consultation Services

Scopious offers Customers paid consultation services to help investigate, design, deploy, and enhance IoT systems.

## 2 Prices

2.1 Prices are listed on our website <http://www.scopious.co.nz> and are in New Zealand dollars. The amounts shown are exclusive of taxes.

2.2 Unless the Customer is on a fixed price contract, Scopious reserves to the right to adjust prices as and when needed. If prices are to change, Scopious will provide a minimum of 30 days notice.

## 3 Billing and Payments

3.1 Customers subscribe to Scopious' Platform Services on a month-by-month basis unless the Customer has agreed to a fixed term contract.

3.2 Customers are billed monthly on a per device actual usage basis.

3.3 The first month subscription is free.

3.4 GST is charged on all fees and services.

3.5 Payment must be made within 30 days from the issue of Scopious' invoice.

3.6 Late payment charges of 2% per month will be incurred on all overdue accounts. If a payment has not been made within 60 days from the issue of Scopious' invoice the Customer's account will be suspended. Scopious will be entitled to charge any costs incurred in collecting outstanding accounts.

3.7 On sign-up Customers must provide credit-card details that will be automatically charged at the end of each billing cycle. Customers may apply to move to an on-account payment method, but this will be at the discretion of Scopious.

3.8 Consultation services are billed on a per job basis.

3.9 No waiver of any term of this agreement or the failure by Scopious to enforce any provisions of this agreement shall be deemed to be a waiver of any other terms or any subsequent breach.

#### **4 Limitation of Liability**

4.1 To the maximum extent possible and applicable to the laws of New Zealand, Scopious' liability will be limited to the extent set out in this clause should it fail to perform its duties or meet its obligations under this agreement.

4.2 In particular, where the supply of Scopious services are for business purposes, the provisions of the Consumer Guarantees Act 1993 shall not apply.

4.3 In the event of any liability of Scopious, it shall be limited to the subscription amount the Customer has paid to Scopious during the preceding two months.

4.4 Scopious shall not be held liable for any indirect damages (including, but not limited to loss of profit, loss of savings, loss of data, damage to equipment or infrastructure, damage to reputation, or damage due to business interruption) caused to the Customer or any third parties.

4.5 Scopious shall not be held liable for damages or loss as a result of intentional or reckless actions by the Customer.

4.6 The Customer and Scopious both agree these limitations of liability are fair and reasonable and they agree to be bound by the provisions of this agreement.

#### **5 Force Majeure**

5.1 Scopious shall not be held liable for damages or losses (whether direct, indirect, or consequential) when failing to perform or meet the conditions of this agreement due to events beyond its control. These may include power outages, internet failures, telecommunication infrastructure failures, network attacks (including D(DOS) attacks), attacks by malware or other harmful software, equipment failure, civil commotion, natural disaster, strikes, terror attacks, war, import and export barriers, pandemics, government-imposed restrictions on services or movement, fires, floods, earthquakes or other natural disasters or any other event or circumstances beyond the reasonable control of Scopious.

5.2 If a Force Majeure situation has lasted for more than ninety (90) days, both parties will be entitled to give notice to terminate this Agreement in writing with immediate effect.

#### **6 Indemnification**

The Customer agrees to indemnify, and hold Scopious harmless from any claims, suits, actions, proceedings, damages, payments, deficiencies or fines that may result from the Customers use of Scopious' services.

#### **7 Equipment Compliance**

7.1 Customers connecting equipment to Scopious' network are required to read and comply with Scopious' Service Level Agreement, specifically the section detailing end-device and gateway requirements.

7.2 Customers equipment must be configured to obey all local laws with regards to conforming to Radio Frequency compliance regulations and rules.

#### **8 Applicable Law**

The agreement is to be governed by New Zealand law. The parties submit to the exclusive jurisdiction of the Courts of New Zealand.

#### **9 Privacy and Data Protection**

Details of privacy and data protection are contained within the Scopious Privacy Policy, a copy which can be provided on request, and which is available on Scopious' website.

#### **10 Use of Services**

10.1 Customers shall not to use Scopious' services in a manner that will, in the opinion of Scopious:

10.1.1 Violate these Terms of Service

10.1.2 Breach any applicable laws or regulations

10.1.3 Cause or could cause loss or damage to Scopious, Scopious's customers, or third parties

10.1.4 Cause any hindrance or detrimentally affect other users of the platform or impede the systems and networks of Scopious or third parties

10.1.5 Allow the distribution of malware or any other harmful software

10.1.6 Store or make available information or materials that infringe upon any Intellectual Property Rights or other third-party rights

10.1.7 Promote or provide instructions or information about how to engage in illegal conduct, commit illegal activities or promote physical harm or injury

10.1.8 Store or make available materials that are threatening, libellous, defamatory, obscene, misleading, offensive or unlawful in any way whatsoever

10.2 If in the opinion of Scopious a breach of these terms has occurred, they reserve the right to take measures to end the violation. This includes suspension or termination of access to the platform or termination of this agreement without notice.

#### **11 Confidentiality**

Scopious and Customers will treat any data or knowhow they provide to each other as confidential, before, during and after termination of the agreement if the information is marked confidential or if it is known the information was intended to be confidential.

## 12 Intellectual Property Rights

All intellectual property rights relating to the services provided by Scopious shall remain exclusively with Scopious. Customers shall only receive a licence to use the services only.

## 13 Term and Termination

Where Scopious operates a monthly contract subscription-based service, termination of the service can be done by either party in writing by giving one month's notice to the other. This notice period and procedure shall not apply to Customers on a fixed term contract or for Customers whose accounts are in arrears.

## 14 Platform Availability and Maintenance

14.1 Scopious will endeavour to ensure continuous availability of the Platform Services as laid out in the Scopious Service Level Agreement.

14.2 Scopious may perform maintenance on the IoT Platform and make changes to the IoT Platform in the form of version updates. These may sometimes result in changes to functionality.

14.3 Maintenance-related activities may result in interruptions in the availability of the IoT Platform. If Scopious are able to foresee these activities resulting in interruptions to the service, Scopious will endeavour to ensure the maintenance does not take place during peak-hours and instead during hours of low demand.

14.4 Scopious will notify Customers of planned maintenance-related activities at least 5 days in advance. Emergency maintenance may be needed and may occur at any time, without prior notification to Customers.

14.5 Customers will not be able to use older versions of the IoT Platform once an update has been performed.

## 15 Client Data and Back-ups

15.1 Customer data processed by the Platform Services remains the property of the Customer. Refer to the Scopious Privacy Policy for details of capture and sharing of Customer data.

15.2 Customer data stored in the Scopious IoT Platform is backed up by Scopious. These back-ups are made as a precaution for technical failures or disruptions on the servers. The Scopious Service Level Agreement provides more details on backup services.

15.3 Scopious does not provide a backup/restore service for Customer data. For example, if Customer accidentally removes any data from the platform, Scopious does not provide a restore service.

15.4 When Customer terminates their account with Scopious, Scopious reserves the right to remove all Customer data from the platform.

15.5 Upon request Scopious can assist in exporting customer data before termination of their agreement. After termination of the agreement the Customer is solely responsible for managing their data.

## 16 Support

The website will provide online self-help in the form of user guides and FAQs. In addition, Scopious offers paid support as outlined in the Scopious' Service Level Agreement.

## 17 Consultancy

17.1 Scopious offers at additional cost, paid consultation services to Customers. This service may be verbal or in written form depending on Customer needs and requirements.

17.2 Information given to the Customer shall be exclusive and non-transferable unless otherwise agreed in writing beforehand.

17.3 Consultancy material provided is to be used by the Customer for their own use and for the specified purpose, unless otherwise agreed.

## 18 Dispute Resolution

18.1 If there are any disputes or alleged failures by Scopious, the Customer must notify Scopious promptly in writing, providing full details of the issue. In the event the issue is able to be remedied, Scopious is to be provided a reasonable opportunity to remedy the fault.

18.2 Subject to the above, all disputes and differences between the parties in relation to their rights or obligations or in relation to the work to be carried out under this agreement, shall be negotiated by the parties in good faith or by structured mediation.

18.3 If the dispute is not resolved by negotiation or mediation, and the dispute relates to internet hosting and management services, the parties shall seek an expert opinion from a qualified independent IT consultant. If a resolution is not reached following receipt of the expert's opinion, or if it relates to another matter, the dispute shall be referred to arbitration in accordance with the Arbitration Act 1996 to be decided by a single arbitrator agreed upon by the parties that has prior experience in the resolution of that particular dispute. If the parties fail to agree on an arbitrator or the terms of engagement, the arbitrator shall be appointed, and the terms fixed by the President for the time being of Arbitrators and Mediators Institute of New Zealand Incorporated upon the application of either party. The place of arbitration will be in Christchurch New Zealand. . The parties agree where necessary or applicable to submit to and be bound by the terms of such arbitration under the provisions of Section 11 of that Act.

## 19 General Terms

19.1 Liability under this agreement shall not be discharged, prejudiced or affected by the granting of time, credit or other indulgence or concession, the liquidation or bankruptcy of either party or any other act, omission or event which but for this provision might operate to discharge or impair or otherwise affect a party's obligations under this agreement. No waiver or variation of this agreement will be effective unless it is in writing and specifies the matter to be waived or varied.

19.2 By subscribing to Scopious' services, the Customer shall be deemed to have accepted these terms of service.

19.3 Scopious shall be able to amend these terms from time to time. The version published on the Scopious website shall be the current version and the Customer shall be deemed to have agreed to those terms upon notice having been provided to them

that a change has been made.

19.4 In the event of any one or more of the provisions of this agreement for any reason are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions of this agreement.

19.5 All notices or documents shall be sufficiently given or served if delivered personally to the recipient of such notice at the recipient's home or office or if sent by facsimile (deemed to have been received on receipt of an error free transmission slip) or email (deemed to have been received at the time of a successful transmission and acknowledgement, excluding automated out of office replies) or to such other address or by such other method as accepted in writing by either party from time to time.

19.6 This agreement constitutes the entire agreement between the parties and shall supersede all previous negotiations, commitments and/or writings.