

APNIC Sub-Assignment Terms and Conditions

This Standard Terms and Conditions is between AIRNET NZ Limited ("AIRNET") and the person or legal entity named in the Service Order Form ("Customer") and is effective the day that Customer accepts the Agreement either by making payment for or by using the Service.

DEFINITIONS

"Agreement" means these Standard Terms and Conditions, the AIRNET Service Order Form and the AIRNET Server Hosting Acceptable Use Policy, collectively.

"AUP" means the AIRNET Server Hosting Acceptable Use Policy, as it may be amended from time to time in accordance with Clause 6 of these Standard Terms and Conditions.

"Business Day" means Monday through Friday, 9:00am to 5:00pm, New Zealand time, excluding any day that registered banks in Hawkes Bay, New Zealand are required or permitted to be closed.

"Service Commencement Date" means the date AIRNET makes 'Live' the Services.

"Service" or "Services" means the hardware, software and services provided by AIRNET.

"Service Order Form" means the formal list of Services to be delivered by AIRNET and paid for by Customer, as may be amended from time to time in accordance with Clause 17.6 of these Standard Terms and Conditions.

1. TERM

1.1. The Agreement shall begin on the Service Commencement Date and continue for the period stated in the Service Order Form (the "Initial Term").

1.2. Following the expiration of the Initial Term (unless AIRNET and Customer have agreed a "Renewal Term" being one or more additional terms having a fixed number of months to follow the Initial Term) the Agreement shall automatically renew for successive extended terms of thirty (30) days (each and "Extended Term") until AIRNET or Customer provides the other with thirty (30) days advance written notice of termination.

2. SERVICES

2.1. Contingent upon Customer's satisfaction of Airnet's credit approval requirements and on AIRNET's verification of the information provided by Customer for the purpose of establishing the Service, AIRNET agrees to provide the Services in accordance with the terms of the Agreement.

2.2. In addition, AIRNET may from time to time perform certain additional services on an hourly fee basis ("Supplemental Services"), such as the customisation of a Service at Customer's request and other professional technical services. Except for emergency and remediation services described in Clause 3 of these Standard Terms and Conditions, Supplemental Services will be performed only on Customer's advance approval and will be invoiced at AIRNET's standard fees at the time the Supplemental Services are performed or other rates approved in advance by Customer.

3. EMERGENCY AND REMEDIATION SERVICES

3.1. In the event of a security emergency, problems caused by an AUP violation or other emergency, AIRNET may, in its sole discretion, perform Supplemental Services for Customer without Customer's prior consent.

3.2. Customer agrees to pay AIRNET's then current hourly rate for Supplemental Services or the rates stated in the AUP (whichever are most appropriate) provided, however, that the fees for remediation any one emergency or problem caused by an AUP violation shall not exceed one month's recurring fee for the Services or NZ\$2,500.00, whichever is greater, unless agreed by both parties.

4. PAYMENTS

4.1. Fees

4.1.1. Customer agrees to pay the monthly fee stated in the Service Order Form and AIRNET's standard fees for Supplemental Services as defined in Clause 3.2 of these Terms and Conditions in effect at the time the Supplemental Services are performed.

4.1.2. AIRNET's first invoice shall be the sum of the first monthly fee or part Monthly fee which is payable in full on the first day of the month following the Service Commencement Date.

4.1.3. Following the Service Commencement Date, and first part month use; the monthly fee is due in arrears on the first day of each month following.

4.1.4. Invoices for Supplemental Services, excess data transfer, reinstatement of service, switching and upgrade fees and other non-recurring amounts are due on the anniversary of the Service Commencement Date of the month following receipt by Customer.

4.1.5. Customer acknowledges that it is responsible for excess data transfer fees that may result from a denial of service or other attack on its AIRNET servers.

4.1.6. Payments must be made in New Zealand dollars.

4.1.7. AIRNET may charge interest on overdue amounts at a rate equivalent to AIRNET's bank overdraft interest rate plus 2% per annum. Interest will not be payable on amounts in dispute under Clause 16 of these Standard Terms and Conditions, provided the dispute is resolved in favour of the Customer. Interest will accrue from the date the payment is due until the date of actual payment.

4.1.8. AIRNET may suspend any or all Services on five (5) Business Days advance notice if Customer is overdue on the payment of any amount due under the Agreement by more than fifteen (15) Business Days.

4.1.9. Customer agrees to pay AIRNET's then current reinstatement fee (not to exceed \$500.00 without Customer's advance approval) following a suspension of service for non-payment or an AUP violation investigation. Customer agrees to pay AIRNET's reasonable costs of collection of overdue amounts, including collection agency fees, lawyer's fees and court costs.

4.2. Early Termination

4.2.1. Customer acknowledges that the amount of the monthly fee for the Service is based on Customer's agreement to pay the fee for the entire Initial Term and any agreed Renewal Term.

4.2.2. All fees due under the Agreement, including the monthly fees for the remaining portion of the Initial Term or any Renewal Term, are due within five (5) Business Days following termination of the Services where:

4.2.3. AIRNET terminates the Agreement in accordance with Clauses 12 of these Standard Terms and Conditions; or

4.2.4. Customer terminates the Agreement but not in accordance with Clauses 12 of these Standard Terms and Conditions.

4.3. GST

4.3.1. Customer shall remit to AIRNET all Goods and Services Tax imposed on the provision of the Services, regardless of whether AIRNET fails to collect GST at the time the related Services are provided, subject to presentation of a valid GST invoice.

5. CUSTOMER OBLIGATIONS

Customer agrees to do all of the following at its expense, whether provided by AIRNET, Customer or a third party:

5.1. **Security Precautions.** Notwithstanding any agreement by AIRNET to provide security services, use reasonable security precautions in connection with its use of the Services and, if Customer resells AIRNET's services, require its customers and end users to use reasonable security precautions;

5.2. **Information Back Up.** Create and maintain a current and verified copy of all server content (including software, data and other information stored on Customer's AIRNET servers) and store that copy in a reasonably secure location other than on Customer's AIRNET server;

5.3. **Law, AUP.** Comply with laws applicable to Customer's use of the Services and with the AUP, and if Customer resells AIRNET's Services, require its customers and end users to comply with applicable law and the AUP; and

5.4. **Investigation of AUP.** Cooperate with AIRNET's reasonable investigation of any suspected violation of the AUP.

6. ACCEPTABLE USE POLICY (AUP)

6.1. Customer agrees that AIRNET may, in its reasonable commercial judgment consistent with industry standards, amend the AUP from time to time to further detail or describe reasonable restrictions and conditions on Customer's use of the Services.

6.2. Amendments to the AUP are effective on the earliest of 20 Business Days after AIRNET's notice to Customer that an amendment has been made, or the beginning of any Renewal Term or Extended Term.

6.3. However, if the amendment would materially or adversely affect Customer and Customer provides AIRNET with a written notice describing its objection to the amendment in reasonable detail before the effective date of the amendment, the amendment shall not become effective as to Customer, but AIRNET shall have the right to terminate the Agreement without liability as provided in Clause 12.2.4 of these Standard Terms and Conditions.

6.4. You agree not to use the Internet services or attempt to use or allow the Internet services to be used :

6.4.1. in any way that is unlawful

6.4.2. in any way that is offensive or interferes with another customer's enjoyment of our services

6.4.3. in any way that harasses, menaces or stalks people

6.4.4. in any way which unlawfully incites discrimination, hate or violence towards one person or group, for example because of their race, religion, gender or nationality

6.4.5. to send, display, access, make available, publish, distribute or be otherwise involved in material which is unlawful, abusive, obscene, defamatory or is, or would be regarded by us, acting reasonably, as, in all the circumstances, offensive

6.4.6. to gain or attempt to gain unauthorised access to any computer systems or in a manner which infringes our rights or the rights of any other person

6.4.7. in connection with any program (including a virus, Trojan horse, worm, cancelbot, time bomb), or activity (including a Denial of Service attack), that is designed to provide or allow any form of unauthorised control of, or result in an adverse effect on, a computer, a network or data (whether the computer, network or data is ours or anyone else's)

6.4.8. to access or use our or anyone else's systems, networks or data (including through open relay, port probing and the use of packet sniffers) without consent, regardless of whether or not such access or use has any adverse effect on the system, network or data

6.4.9. to create, send or alter in any way and by any means (including spoofing and use of third party mail servers), the contents of an electronic message for the purpose of hiding,

- obscuring or deleting the source of the message or making the message appear to come from someone other than you
- 6.4.10. in a manner which enables a minor to access material inappropriate for a minor
 - 6.4.11. to send unsolicited electronic mail to any person for the purposes of advertising or promoting any organisation (spamming). Spamming is using the Internet's ability for one person to communicate with many people in a manner that is likely to annoy those internet users. An important component of this is actions that cost other users in misappropriation of their Internet time or their computer resources. Examples include:
 - 6.4.11.1. The sending of unsolicited email
 - 6.4.11.2. The sending of mass commercial e-mail
 - 6.4.11.3. Posting chain letters or pyramid scheme letters
 - 6.4.11.4. Email harassment of other Internet users.
7. **SUSPENSION OF SERVICE**
- 7.1. Customer agrees that AIRNET may suspend Services to Customer immediately upon notice to Customer and without liability if:
 - 7.1.1. AIRNET reasonably believes that the Services are being used in violation of the AUP;
 - 7.1.2. Customer fails to cooperate with any reasonable AIRNET investigation of any suspected violation of the AUP;
 - 7.1.3. There is a denial of service attack on Customer's servers or other similar event for which AIRNET reasonably believes that the suspension of Services is necessary to protect its network or its other customers;
 - 7.1.4. There is a security emergency or other similar emergency; or
 - 7.1.5. As requested by a law enforcement or government agency.
 - 7.2. Customer agrees that AIRNET may suspend Services to Customer without liability if such suspension is scheduled and notified to Customer at least 12 hours in advance by AIRNET, to enable AIRNET to carry out works within its network. AIRNET will use all reasonable endeavours to ensure that such works are performed outside of Business Hours and cause the least possible disruption to Customer and Customer's business.
 - 7.3. Information on Customer's AIRNET servers will be unavailable during a suspension of Service.
8. **WARRANTIES**
- 8.1. **AIRNET.** AIRNET represents and warrants to Customer that it:
 - 8.1.1. Is the owner or licensee of all copyrights, licenses, trademarks, patents or designs used to provide the Services;
 - 8.1.2. Has the appropriate personnel and facilities to provide the Services; and
 - 8.1.3. Will provide the Services in a sound and reasonable manner and with the standard of diligence and care as normally employed by duly qualified persons and in accordance with generally accepted practices appropriate to the Services provided.
 - 8.2. **Customer.** Customer represents and warrants to AIRNET that the information it has provided and will provide to AIRNET for purposes of establishing and maintaining the Services is accurate.
 - 8.3. **Reciprocal.** AIRNET represents and warrants to Customer, and if Customer is not an individual, Customer represents and warrants to AIRNET, that:
 - 8.3.1. It has the power and authority and the legal right to enter into the Agreement and to perform its obligations under the Agreement;
 - 8.3.2. It has taken all necessary action on its part to authorise the execution and delivery of the Agreement; and
 - 8.3.3. The execution and delivery of the Agreement and the performance of its obligations hereunder do not conflict with or violate applicable laws or regulations, and do not conflict with or constitute a default under its charter documents.
 - 8.4. If Customer is an individual, Customer represents and warrants to AIRNET that he or she is at least 18 years of age.
 - 8.5. Notwithstanding Clause 8.1.3 of these Terms and Conditions AIRNET does not warrant or represent that the Services will be uninterrupted, error-free or completely secure.
 - 8.6. Customer acknowledges that there are risks inherent in Internet and network connectivity that could result in the loss of Customer's privacy, confidential information and property.
 - 8.7. To the extent permitted by applicable law, AIRNET disclaims any and all warranties not expressly stated in the Agreement including the implied warranties in the Consumer Guarantees Act 1993 and those of merchantability or fitness for a particular purpose.
 - 8.8. Customer is solely responsible for the suitability of the services chosen.
 - 8.9. All goods and services are provided on an "as is" basis, except as expressly stated in any portion of the Agreement.
9. **UNAUTHORISED USE OF SERVICE**
- 9.1. Customer is responsible for the security of the servers provided pursuant to the Agreement, and AIRNET agrees to perform only the security services specifically described in the Service Order Form or other portion of the Agreement.
 - 9.2. Customer shall be responsible for any unauthorised use of the Services by any person (other than any unauthorised use by AIRNET or its agents), and shall pay all fees incurred for its account by any such person using the Services.

10. **INDEMNIFICATION**
- 10.1. **Customer.** Customer agrees to indemnify and hold harmless AIRNET, AIRNET's authorised representatives, and each of their respective officers, directors, agents, contractors and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable lawyer's fees) brought by a third party under any theory of legal liability arising out of or related to:
 - 10.1.1. The use of Customer's Services in violation of: (a) the AUP, (b) any other portion of the Agreement, or (c) applicable law, by any person regardless of whether such person has been authorised to use the Services by Customer (other than any unauthorised access by AIRNET or its agents); or
 - 10.1.2. Any dispute regarding the control of or unauthorised access to Customer's account details with AIRNET.
 - 10.2. **Reciprocal.** Each party agrees to indemnify and hold harmless the other party, the other party's authorised representatives, and each of their respective officers, directors, agents, contractors and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable lawyer's fees) brought by a third party under any theory of legal liability arising out of or related to the indemnifying party's actual or alleged infringement or misappropriation of a third party's copyright, trade secret, patent, trademark, or other proprietary right.
 - 10.3. **Procedures.**
 - 10.3.1. A party seeking indemnification under this Clause shall provide prompt notice of its claim for indemnification to the indemnifying party, provided, however, that failure to give prompt notice shall not affect the indemnifying party's obligations under this Clause unless and to the extent that the failure materially prejudices the indemnifying party's rights.
 - 10.3.2. The indemnified party will have the right to select legal counsel to defend it in respect of any indemnified matter under this Clause provided, however, that the legal counsel selected must be reasonably satisfactory to the indemnifying party.
 - 10.3.3. The indemnified party will keep the indemnifying party informed of the status of any litigation or dispute resolution procedure, will give reasonable consideration to the suggestions and requests of the indemnifying party with respect to the conduct of the litigation or dispute resolution procedure, and will not settle any matter covered by this Clause without the prior consent of the indemnifying party, which shall not be unreasonably withheld.
 - 10.3.4. Notwithstanding anything in this Clause to the contrary, if the indemnifying party is indemnifying multiple persons related to the subject matter of the indemnification, the indemnifying party shall have the right to seek consolidation of all such actions and to select counsel to defend the actions.
 - 10.3.5. Amounts due under this Clause shall be paid as incurred and may be offset against other amounts due under the Agreement.
11. **LIMITATION OF DAMAGES**
- 11.1. Neither party shall be liable to the other for any lost profits, or any indirect, special, incidental, consequential or punitive loss or damage of any kind, or for damages that could have been avoided by the use of reasonable diligence, arising in connection with the Agreement, even if the party has been advised or should be aware of the possibility of such damages.
 - 11.2. Notwithstanding anything else in the Agreement to the contrary, the maximum aggregate liability in any twelve (12) month period of each party and any of each party's employees, contractors or authorised representatives, under any theory of law (including but not limited to breach of contract, tort or strict liability) shall be a payment of money not to exceed the amount paid by Customer for the Services for the twelve (12) months prior to the occurrence of the event(s) giving rise to the claim.
12. **TERMINATION**
- 12.1. **Customer.** The Agreement may be terminated by Customer prior to the expiration of the Initial Term or any Renewal Term without liability as follows, if:
 - 12.1.1. AIRNET fails in a material way to provide the Services in accordance with the terms of the Agreement and does not remedy that failure within ten (10) Business Days of Customer's written notice describing the failure in reasonable detail; or
 - 12.1.2. AIRNET materially breaches any other provision of the Agreement and fails to remedy that breach within twenty (20) Business Days of Customer's written notice describing the breach in reasonable detail.
 - 12.1.3. AIRNET commits material breaches of the Agreement more than 3 times in any 12 month period, irrespective of whether or not the breaches are remedied.
 - 12.2. **AIRNET.** The Agreement may be terminated by AIRNET prior to the expiration of the Initial Term, any Renewal Term, or Extended Term, without liability as follows:

- 12.2.1. Upon five (5) Business Days advance notice if Customer is overdue on the payment of any amount due under the Agreement by more than fifteen (15) Business Days;
- 12.2.2. Customer materially breaches any other provision of the Agreement, including the AUP, and fails to remedy that violation within twenty (20) Business Days of a written notice from AIRNET describing the violation in reasonable detail;
- 12.2.3. Upon one (1) Business Days' notice if Customer's Services are used in violation of the same material term of the AUP more than once;
- 12.2.4. Upon one (1) Business Days' notice if Customer objects to AIRNET's amendment to the AUP as provided in Clause 6 of these Standard Terms and Conditions; or
- 12.2.5. Upon reasonable notice if AIRNET is threatened with a legal claim for copyright or patent infringement related to the provision of the Services and is unable to modify the Services in a way that avoids an ongoing risk of liability.
- 12.3. **Reciprocal.** The Agreement may be terminated by either party prior to the expiration of the Initial Term or any Renewal Term, or Extended Term, without liability as follows:
- 12.3.1. Upon the other party becoming insolvent; or
- 12.3.2. Upon a receiver or manager of any asset of the other party being appointed, or an order made or resolution passed for the liquidation of the other party.
13. **CONFIDENTIALITY**
- 13.1. **Confidential Information Is:**
- 13.1.1. With respect to AIRNET, AIRNET's unpublished prices for Services, server configuration designs and other proprietary technology;
- 13.1.2. With respect to Customer, content transmitted to or from, or stored by Customer on, AIRNET's servers; and
- 13.1.3. With respect to both parties, other information that is conspicuously marked as "confidential" or if disclosed in non-tangible form, is verbally designated as "confidential" at the time of disclosure and confirmed as confidential in a written notice given within one (1) day of disclosure.
- 13.2. **Reciprocal Agreement.** Each party agrees not to disclose the other's "Confidential Information" to any third party except to its agents and representatives who need to know the information to represent or advise it with respect to the subject matter of the Agreement.
- 13.3. **Use of Parties' Logos and Trademarks.** Neither party may publicly use the other party's logo or other trade or service mark without that party's permission. The parties acknowledge that this does not inhibit each party from referring to the other party by name in any way.
- 13.4. **Requests for Customer Information.** Notwithstanding anything to the contrary above, Customer agrees that AIRNET may, without notice to Customer, provide any information, including Confidential Information, it has about Customer or any of its customers or end users in response to a formal request from a law enforcement or regulatory agency or a formal request in a civil action that on its face meets the requirements for such a request.
14. **THIRD PARTY PRODUCTS**
- 14.1. At Customer's request and as a convenience to Customer, AIRNET may from time to time arrange for Customer's purchase or license of third party software, services and other products not included as part of the Services, and/or may provide support to Customer in relation to those products.
- 14.2. AIRNET makes no representations or warranty whatsoever regarding such third party products and related support services and they are provided "as is."
- 14.3. Customer's use of third party software, services and other products is governed by the terms of any license or other agreement between Customer and the third party.
15. **NOTICES**
- 15.1. Any notice or other communication to be given under this Agreement ("**Notice**") may be given by one party to any other party to the Agreement by personally serving it on that party or by sending it by post or transmitting it by e-mail or facsimile to the address set out below for AIRNET and to the address set out in Customer's Service Order Form (or to such other address as the party to be notified may advise for the purpose from time to time):
- Airnet NZ Limited
Station Street
Whakatu
Hastings
PO Box 26
Whakatu
Hastings 4161
- Attention: Ben Deller
Facsimile: +646 8781269
Email: ben@team.airnet.net.nz
- 15.2. Unless there is evidence to the contrary, any notice or document so given shall be deemed to be given at the time when it was actually delivered, came to the attention of the addressee, was sent by facsimile, or within 48 hours after the time it was posted to the recipient party at the respective address set forth above
- PROVIDED THAT:**
- 15.2.1. in the case of a notice personally served on a party or transmitted by facsimile, if the date of delivery or transmission is not a Business Day, or the service or transmission is made after 5:00pm on a Business Day then the notice will be deemed to have been received on the next Business Day;
- 15.2.2. in the case of a notice mailed to the recipient, if the date on which it was mailed was not a Business Day, then the notice will be deemed to have been received two (2) Business Days after the date on which it was mailed; and
- 15.2.3. in the case of a notice sent by e-mail, the notice will be deemed to have been received when the e-mail enters the information system designated in clause 15.1 (or advised by the recipient in accordance with clause 15.1) unless the date on which it is received is not a Business Day, in which case the notice will be deemed to have been received on the next Business Day.
16. **DISPUTES**
- 16.1. If any dispute arises out of or in connection with the Agreement, neither party shall commence any court or arbitration proceedings relating to the dispute unless that party has complied with the provisions of this Clause, except where a party seeks urgent interlocutory relief.
- 16.2. A party claiming a dispute will promptly give notice to the other party specifying the nature of the dispute. On receipt of a notice claiming a dispute has arisen, the parties will endeavor in good faith to resolve the dispute.
- 16.3. If the parties do not resolve the dispute within five (5) Business Days of receipt of the notice claiming a dispute has arisen (or such further period as agreed in writing by them), then a mediator will be appointed using the following process:
- 16.3.1. The dispute shall be submitted to mediation, administered by an independent mediation service agreed by both parties and held in accordance with its mediation rules.
- 16.3.2. Pending resolution of any dispute the parties will continue to perform their obligations under the Agreement without prejudice to their respective rights and remedies.
- 16.4. Each party shall be liable for any costs, debt collection, lawyer or court fees reasonably incurred in the collection of undisputed amounts or disputed amounts found by mediation to be owing by one party to the other.
17. **MISCELLANEOUS**
- 17.1. **Solicitation of Employees.** Each party agrees that it shall not solicit any employee of the other party for employment with that party or any other legal entity during the term of the Agreement and for twelve (12) months following termination of the Agreement.
- 17.2. **Ownership.** Each party acknowledges and agrees that the other party retains exclusive ownership and rights in its trade secrets, inventions, copyrights and other intellectual property, and that AIRNET shall own any intellectual property that it may develop in the course of performing the Services. Customer does not acquire any ownership interest or rights to possess AIRNET's server(s) or other hardware, and has no right of physical access to the hardware. Upon expiry or termination of the Agreement Customer agrees:
- 17.2.1. That AIRNET may put to use for another purpose the servers that have been used by Customer and delete all Customer information on such servers upon giving Customer a reasonable opportunity (and, in any event, not less than five (5) Business Days notice) to copy recover the information from such; and
- 17.2.2. To promptly release any Internet protocol numbers, addresses or address blocks assigned to Customer in connection with the Services (but not any URL or top level domain or domain name) and agrees that AIRNET may take steps to change or remove any such IP addresses.
- 17.3. **Governing Law, Jurisdiction, Venue.** The Agreement shall be governed by the laws of New Zealand. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods or by New Zealand's Consumer Guarantees Act 1993. Exclusive venue for all disputes arising out of or relating to the Agreement shall be the courts of New Zealand and each party irrevocably consents to such personal jurisdiction and waives all objections thereto.
- 17.4. **Modifications.** Except for the following, the Agreement may be amended only by a formal written agreement signed by both parties:
- 17.4.1. Amendments of the AUP as described in Clause 6 of these Standard Terms and Conditions; or
- 17.4.2. A Renewal Term may be agreed or changes to any part of the Service Order Form may be made by an exchange of written correspondence (including electronic mail) that includes both parties' express consent to the renewal or change.
- 17.4.3. The terms on Customer's purchase order or other business forms are not binding on AIRNET unless they are expressly incorporated into a formal written agreement signed by both parties.

- 17.5. **Non-Waiver.** A party's failure or delay in enforcing any provision of the Agreement will not be deemed a waiver of that party's rights with respect to that provision or any other provision of the Agreement. A party's waiver of any of its right under the Agreement is not a waiver of any of its other rights with respect to a prior, contemporaneous or future occurrence, whether similar in nature or not.
- 17.6. **Headings.** The headings in the Agreement are not part of the Agreement, but are for the convenience of the parties.
- 17.7. **Survival.** The following provisions of these Standard Terms and Conditions will survive expiration or termination of the Agreement: fees (Clause 4.1), indemnity obligations (Clause 10), confidentiality obligations (Clause 13) , provisions limiting liability (Clauses 9 and 11), disclaiming warranties clause 8, regarding ownership of intellectual property (Clause 17.2), these miscellaneous provisions (Clause 17), and other provisions that by their nature are intended to survive termination of the Agreement.
- 17.8. **Force Majeure.** Neither party shall be in default of any obligation under the Agreement if the failure to perform the obligation is due to any event beyond that party's control, including, without limitation, significant failure of a portion of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organised labour action, terrorist activity, or other events of a magnitude or type for which precautions are not generally taken in the industry. Where this failure to perform an obligation continues for a period of thirty (30) consecutive days the other party has the right to terminate this Agreement without penalty, subject to Clause 4.2.2 of these Standard Terms and Conditions.
- 17.9. **No Third Party Beneficiaries.** There are no third party beneficiaries to the Agreement. Neither insurers nor the customers of resellers are third party beneficiaries to the Agreement
- 17.10. **Severability.** If any term of these Standard Terms and Conditions is determined to be invalid or unenforceable, all other terms shall remain in full force and effect and said term shall be reformed only to the extent necessary to make it enforceable.
- 17.11. **Relationship Between the Parties.** The parties are independent contractors and not partners or joint ventures. Neither party is the agent of the other and neither party may represent to any other that it has the power to bind the other on any agreement. The Agreement is non-exclusive. AIRNET may provide service to any other, including a competitor of Customer.
- 17.12. **Assignment.** Customer shall not assign, subcontract, pledge or transfer the whole or any part of its rights, duties or obligations under this Agreement, without the previous written consent of AIRNET. AIRNET may not do the same without first notifying Customer.
- 17.13. **Privacy.** The information in the Agreement about Customer and any other personal or business information which Customer may provide at any time may be used by AIRNET for the purposes of checking Customer's credit and introducing other products and services to Customer. Furthermore the Privacy Act 1993 gives Customer the right at any time to request an update or correction of the information held by AIRNET, or to have AIRNET remove Customer's name from AIRNET's mailing list.
- 17.14. **Credit Approval.** By signing this Agreement, and in accordance with the Privacy Act 1993, Customer authorises AIRNET to exchange information with Credit Reporting Agencies and any credit providers about Customer's credit worthiness, both personal and commercial.
- 17.15. **Entire Agreement.** The Service Order Form and AUP are hereby incorporated in these Standard Terms and Conditions by reference and together collectively constitute the Agreement. The Agreement is the complete and exclusive agreement between the parties regarding its subject matter and supersedes and replaces any prior understanding or communication, written or oral.
18. **Acknowledgement.** By continuing to maintain Services with AIRNET, the Customer is stating and acknowledging that the Customer has read and understood the Agreement and agrees to be bound by it.