

**AIRNET**  
**GENERAL TERMS AND CONDITIONS – JULY 2010**

**1 INTRODUCTION**

- 1.1 The general terms and conditions set out below will apply to the Services and Equipment that are provided to you by Airnet. These are the general terms and conditions of Airnet's agreement with you and you should read these general terms and conditions carefully before using Services and Equipment provided by Airnet. Additional specific terms may apply to some of our Services. These additional specific terms will also form part of Airnet's agreement with you. Where these general terms and conditions conflict with any additional specific terms then the latter will take precedence.

**2 DEFINITIONS**

- 2.1 In this document the following words and phrases shall have the following meanings unless the context clearly indicates otherwise:
- "Agreement" means any written agreement between Airnet and you for the provision of Services and Equipment and shall include the General Terms and Conditions as contained in this document.
- "Airnet", "our", "us" or "we" means Airnet NZ Limited.
- "Airnet Network" means the network of communication facilities owned by Airnet which Airnet uses to provide Services for you and other customers of Airnet.
- "Equipment" means all equipment and software provided to you by Airnet in order to provide the Services.
- "General Terms and conditions" means the terms and conditions contained in this document.
- "Services" means the internet services and telecommunications services as specified in any Agreement between Airnet and yourself.
- "You" and "Yourself" means the customer who has entered into an Agreement with Airnet for the provision of Equipment and Services.

**3 TERM OF THE AGREEMENT**

- 3.1 The term of the Agreement shall be in accordance with the term as specified in the Agreement between Airnet and yourself and shall continue thereafter until cancelled by either party in accordance with the specific terms contained in the Agreement.

**4 SUPPLY AND USE OF SERVICES**

- 4.1 Airnet may in its sole discretion, refuse any application for the services. Airnet will not be obliged to provide the services to you unless your application has been approved.
- 4.2 Airnet shall provide the Services to you with reasonable care and skill. Airnet shall ensure that the Services are reliable and are of a high standard although Airnet does not guarantee that the Services will be continuous or fault free. Airnet shall ensure that all work that it performs in connection with the provision of the Services is carried out by competent and suitably qualified personnel and in a professional manner.
- 4.3 After an Agreement has been entered into by the parties, Airnet shall as soon as reasonably practical, arrange for the supply, delivery and installation of Equipment to your specified site. You shall, at your own expense, secure and maintain all necessary approvals and consents for the installation of the Equipment at or on your selected site, for any alterations at your site needed to install such Equipment and for the right of access to install the Equipment. Airnet shall have no responsibility whatsoever in relation to any such approval or consent.
- 4.4 Airnet shall be entitled at any time to alter, at its own expense, the mechanism or method by which Airnet provides the Services, provided that any such alteration shall not, diminish, impinge or otherwise reduce the quality, capacity or accessibility of the Services.
- 4.5 You agree to use the Services in accordance with our Acceptable Use Policy (AUP) (which is available at [www.airnet.co.nz](http://www.airnet.co.nz))
- 4.6 You must not use or permit our Services to be used in any way which breaks any law, infringes anyone's rights, is malicious, obscene or offensive, or damages the Airnet Network or that of any other operator.
- 4.7 You must keep confidential any password or PIN number which is used by you to access our Services. It is recommended, for security reasons, that you change these on a regular basis. If requested by Airnet you must change your password or PIN number in a timely manner.
- 4.8 You must comply with any reasonable restrictions we impose or directions we give regarding the use of the Services.
- 4.9 You must ensure that all information you provide to us is correct. If any information you have supplied to us changes you must provide us with updated information as soon as possible.
- 4.10 You must immediately report any misuse of the Services or disclosure of your account information.
- 4.11 Where we provide you with any software we remain the owner or licensee of the software. We provide it for your own internal use and for the purposes for which we provide it. You must not change or interfere with the software in any way. You must not copy any part of the software without our permission.
- 4.12 Where we, at our discretion, provide upgraded or new versions of the software we expect you to install the upgrade or new version as soon as you reasonably can assuming it will not adversely affect any Services we provide to you, or your use of our Services.

**5 SUPPLY AND USE OF EQUIPMENT**

- 5.1 Use of our Services does not give you any rights in any part of the Airnet Network.
- 5.2 Airnet may supply Equipment to you in connection with the provision of Services to you. Where Equipment is supplied to you ownership remains with Airnet and you must not:
- (a) remove the Equipment from your site without the prior written consent of Airnet;
  - (b) sell, lease, dispose of, lend or otherwise part with possession of or modify in any way the Equipment;
  - (c) use the Equipment for any purpose other than the Services in your specified site in accordance with the Agreement and these General Terms and Conditions;
  - (d) deface, obliterate or remove any label or mark which identifies the ownership of the Equipment by Airnet; or
  - (e) do any other act which may adversely affect or prejudice the ownership of the Equipment by Airnet.
- 5.3 You agree to follow directions about using any Equipment you rent from, or is supplied by, Airnet.

- 5.4 You agree to follow directions when connecting anything to the Airnet Network and make sure it is installed to Airnet's specifications and that nothing on the property under your control interferes or damages the Airnet Network.
- 5.5 You agree to supply at your sole cost electricity sufficient to operate the Equipment. To ensure that the Services continue when electricity is unavailable, Airnet strongly recommends you obtain an uninterrupted power supply unit.
- 5.6 You must immediately return the Equipment to Airnet on termination or cancellation of the Agreement.
- 5.7 You shall be liable for any loss (including by fire), theft, or damage caused to the Equipment. It is your responsibility to effect insurance cover if you elect to do so, against potential liability under this clause.
- 5.8 Airnet or its agent has the right during the term of the Agreement to enter your specified site in order to maintain, replace or repossess the Equipment or where Airnet has reasonable grounds to believe that you are not complying with your obligations under the Agreement.

## **6 PAYMENTS & CHARGES**

- 6.1 You must pay for Services that Airnet provides to you. You can view information about our current charges by visiting our website [www.airnet.co.nz](http://www.airnet.co.nz).
- 6.2 You must also pay for 0900 calls charged to you or made from your phone regardless of who makes them. Airnet will charge you for those calls on behalf of 0900 service providers. Agreement to pay for those calls also applies to and is for the benefit of the 0900 service providers and may be enforced by them.
- 6.3 Unless otherwise specified in the Agreement, Airnet may increase prices for the Services, change the way it charges or introduce chargeable services that were previously free. Where this occurs we will give you a minimum of ten (10) working days written notice (one month where possible). The notice will be delivered to your billing address or to your nominated contact email address.
- 6.4 You agree to pay to Airnet the following
  - (a) any installation fees specified in the Agreement;
  - (b) charges for Services and access, as specified in the Agreement, with such charges for the first month being due immediately prior to connection of establishment of the Services;
  - (c) after the first month, charges for the Services and access as specified in invoices rendered by Airnet with such charges to be paid on the 20th of the month following the invoice date unless otherwise agreed;
  - (d) on demand any additional services or usage fees as specified in the Agreement or any relocation fees if any Equipment is relocated at your request to an alternate site;
  - (e) on demand, GST and any other applicable taxes, levies or duties which may be payable on payments under the Agreement;
  - (f) on demand, reimbursements for any costs caused by a dishonoured payment from you;
  - (g) on demand, all reasonable costs incurred for the collection of any overdue debts owed by you to Airnet under the Agreement; and
  - (h) on demand, a reconnection fee of \$100 after disconnection of Services for non payment of account.
- 6.5 You agree to pay the payments referred to above without set-off, counterclaim or deduction.
- 6.6 Unless otherwise specified, all payments are to be made to Airnet NZ Limited, PO Box 26, Whakatu 4161.
- 6.7 Airnet may charge interest at the rate of 2% per month on any payments under the Agreement which remain unpaid after 30 days from the due date for payment.

## **7 NUMBERS, ELECTRONIC ADDRESSES & DIRECTORIES**

- 7.1 Airnet may allocate phone numbers, electronic addresses and other codes to you in respect of the Services. You will not have any ownership rights in those numbers, addresses and/or codes and you may not transfer them to anyone else.
- 7.2 If required by law or if it is necessary to do so for operational reasons, we may change any phone number, electronic address or code allocated to you. However, Airnet will always give you as much notice as reasonably possible of any such change.
- 7.3 If you wish for your details to be available through directory assistance and/or in the phone book then you will need to contact the Yellow Pages Group directly, Airnet is not responsible for any listings. The Yellow Pages Group is available on 0800 803 803.

## **8 PRIVACY**

- 8.1 During the term of the Agreement you may supply us with personal information. We may also obtain personal information from your use of the Services. You authorise Airnet to use this personal information collected about you for the purposes of marketing its products and services to you, market research, credit control and debt collection (which includes logging overdue debts and/or liquidated damages owed to Airnet with credit reference agencies). You acknowledge and agree that such personal information may be held by Airnet for such period both before and after termination or cancellation of the Agreement as Airnet in its absolute discretion considers appropriate.
- 8.2 Any personal information we collect is kept at our offices at Whakatu, Hastings. You are entitled to see any personal information we hold about you (although you must pay our reasonable charge for making it available) and to request that any incorrect information be corrected.

## **9 NO WARRANTY**

- 9.1 You assume full responsibility and risk for use of the Services.
- 9.2 Airnet does not warrant that the Services will be continuous or fault free. Airnet does not warrant that any information, software or other material accessible via the Services will be free from viruses or other harmful components.
- 9.3 No verbal advice or information given by Airnet or its representative shall create a warranty.

## **10 LIABILITY**

- 10.1 Airnet excludes all its liability to you in connection with the provision of the Services to you or failing to provide Services to you. Without limiting this, Airnet is not liable to you (and nor are any of Airnet's officers, employees, contractors or agents liable to you):
  - (a) if any communication you make is intercepted;
  - (b) if any communication you make is not properly transmitted or received;
  - (c) if any of our Services are not available at any time or are faulty;
  - (d) for any delay in commencing the provision of Services;

- (e) if any Equipment supplied by Airnet does not operate properly;
  - (f) for any error in any directory listing which Airnet arranges;
  - (g) (for internet customers) if your computer becomes affected by any virus or other harmful components.
- 10.2 We are not liable to you for any fault in or non-provision of Services which is caused by an event beyond our reasonable control.
- 10.3 If you use another service provider's services during any period when Airnet's Services are not fully operational, Airnet is not liable to pay any amount you are charged by that service provider.
- 10.4 You acknowledge that no third party whose network or services that Airnet uses to supply the Services to you (nor any officer, employee, contractor or agent of such third party) is in any way liable to you in connection with the Services. This clause is intended to confer a benefit which those third parties can enforce.
- 10.5 If Airnet is held to be liable to you for any reason, then Airnet's liability to you is limited to an amount equal to Airnet's average charges to you for one month in respect of any single event or related series of events and to a maximum amount equal to Airnet's average charges to you for a three month period in any one year.
- 10.6 The Airnet Network has been designed to support monitored alarm signalling to replicate the traditional analogue copper line communications networks but Airnet cannot guarantee that the transmission of alarm signals will be fault free. Accordingly, Airnet shall not be held liable in any way for any failure of alarm signalling over the Airnet Network.
- 10.7 You agree 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 arising out of or in relation to your breach of the Agreement.

## 11 TERMINATION

- 11.1 Airnet may suspend or terminate the Agreement and Services without written notice to you if:
- (a) you fail to pay any monies payable to Airnet in terms of the Agreement on the due date;
  - (b) you breach any other term of the Agreement;
  - (c) you use the Services in an unlawful manner;
  - (d) you breach the AUP or if we reasonably believe that the Services are being used in violation of the AUP ;
  - (e) If you fail to cooperate with any reasonable investigation by us of any suspected violation of the AUP.
- This clause applies even if the Agreement is for a fixed period.
- 11.2 Airnet may provide notice of the termination of the Agreement to you by email address to your email account, or by mail or courier service to the address of your specified site. Notices to you shall be deemed effective immediately.
- 11.3 You may terminate the Agreement in accordance with the specific terms contained in the Agreement with Airnet.
- 11.4 Where you wish to terminate the Agreement you must provide us with one (1) month's written notice

## 12 DISPUTE RESOLUTION

- 12.1 If any dispute arises out of or in connection with the Agreement, neither party shall commence any court proceedings relating to the dispute unless that party has complied with the provisions of this clause.
- 12.2 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 endeavour in good faith to resolve the dispute.
- 12.3 If the parties do not resolve the dispute within six (6) weeks of receipt of the notice claiming a dispute has arisen (or such further period as agreed in writing by the parties) then the dispute shall be referred to Telecommunications Dispute Resolution for determination. Details of Telecommunications Dispute Resolution are available at [www.tdr.org.nz](http://www.tdr.org.nz).

## 13 FORCE MAJEURE

- 13.1 If Airnet is prevented from carrying out any obligation imposed upon it in terms of the Agreement by reason of any act of God, inclement weather, act of State, riot, insurrection, civil commotion, strike, sanctions, boycott, embargo or any other circumstances beyond Airnet's reasonable control, Airnet must endeavour to advise you of the existence of the circumstances and the expected duration thereof. The performance of the Agreement will, to the extent that it is made impossible by such circumstances, be suspended until such circumstances cease to prevail. Airnet shall not be liable for any loss, damage, compensation of other reimbursement arising from any damage done to your equipment or network by reason of any of the matters specified in this clause.

## 14 ACKNOWLEDGEMENT

- 14.1 You acknowledge that:
- (a) you are aware the internet contains unedited materials, some of which are sexually explicit or may be offensive to you and that Airnet has no control over and accepts no responsibility for such materials;
  - (b) all content accessed by you through the Services is accessed and used by you at your risk and Airnet and its representatives shall not be liable for any claims losses actions damages or proceedings arising out of or otherwise relating to access to such content by you;
  - (c) Airnet specifically disclaims any responsibility for the accuracy, quality and confidentiality of information obtained, transmitted or distributed through the Services.
  - (d) other entities may be able to access and/or monitor your use of the Services.
  - (e) any sensitive or confidential information (such as credit card numbers or other financial information, medical information or trade secrets) sent by you or to you is sent at your sole risk. Airnet and its representatives shall have no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such actions;
  - (f) you are aware that when using the Services to access the internet or any other online services, there are certain applications, such as FTP, HTTP, proxy or gateway server applications, which may be used to allow other service users and Internet users to gain access to your computer. Airnet and its representatives shall have no liability whatsoever for any claims, losses, actions, damages, suits or other proceedings resulting from, arising out of, or otherwise relating to the use of such applications by you, including, without limitation, damages resulting from others accessing your computer;

- (g) you are aware that the Services provided by Airnet to access the internet is undertaken on the basis of a "shared" form of internet delivery service, meaning time critical applications (video conferencing, online gaming etc) may not be suitable for you, or maximum data transfer speeds may not always be available.

## **15 CONSUMER GUARANTEES ACT**

15.1 You may have the benefit of statutory guarantees under the Consumer Guarantees Act 1993 (CGA). Unless you use, or hold yourself out as using, the Services for the purpose of a business, nothing in these General Terms and Conditions will limit or exclude your rights under the CGA.

## **16 GENERAL**

- 16.1 Airnet may change these General Terms and Conditions or any additional terms of the Agreement from time to time. If so, Airnet will provide you with a minimum of ten (10) working days (one month where possible) written notice. The notice will be delivered to your billing address or to your nominated contact email address. This notice can be located on the Airnet website [www.airnet.co.nz/terms](http://www.airnet.co.nz/terms).
- 16.2 The Agreement supersedes all prior discussions and agreements that you may have had with Airnet for the provision of the Services and Equipment.
- 16.3 Airnet may at any time assign the Agreement to any person, company or business entity. You must not assign or otherwise transfer your rights under the Agreement.
- 16.4 Airnet may at any time subcontract out any or all of its obligations under the Agreement without your consent as long as Airnet is ultimately responsible for its obligation under the Agreement.
- 16.5 The parties agree that the Agreement may be executed in several counterparts (including copies), all of which when taken together shall constitute one single agreement between the parties.
- 16.6 If any clause or term of the Agreement shall be invalid, unenforceable or illegal, then the remaining conditions of the Agreement shall be deemed to be severable therefrom and will continue in full force and effect until such invalidity, unenforceability or illegality is fundamental to the Agreement.
- 16.7 The failure of either party at any time or times to require performance by the other party of any term of the Agreement shall not affect the right to enforce the same. The waiver by either party to any breach of any one or more terms contained in the Agreement shall not be construed to be a waiver of any succeeding breach of such term or any other term.
- 16.8 The headings in the Agreement are not part of the Agreement, but are for the convenience of the parties.
- 16.9 The Agreement shall be governed by and construed in accordance with the laws of New Zealand.
- 16.10 Any notice or other communication to be given by Airnet to you under the Agreement may be given by personally serving it on you, by sending it by post or transmitting it by email or facsimile to the address contained in the Agreement. Any notice or communication to be given by you to Airnet under the Agreement may be given by personally serving it, by sending it by post or transmitting it by email or facsimile to the address detailed on our website at [www.airnet.co.nz](http://www.airnet.co.nz).

## **17 HELPDESK, SUPPORT AND FAULT RESTORATION**

- 17.1 Airnet shall make available to you a telephone helpdesk service available 24/7, with onsite services being available during normal business hours. The following are the recommended support channels you should use:
- (a) For faults, fault enquiries and urgent support requests -
    - During normal business hours (8:30 am till 5:00 pm, Monday to Friday, excluding public holidays) please call 0508 AIRNET (0508 237638) and select Option 2;
    - After normal business hours please call 0508 AIRNET (0508 237 638) and select Option 2, leave a message if unanswered and a technician will be paged to respond to your call.
  - (b) General Support Enquiries / Non Urgent
    - 24/7 enquiries via email to [support@airnet.co.nz](mailto:support@airnet.co.nz)
    - 24/7 enquiries via phone, please call 0508 AIRNET (0508 237638), select Option 2 and leave a message if unanswered.
  - (c) Target Service Levels
    - Return call to client - during hours 10 minutes - after hours 30 minutes
    - Airnet personnel on-site;
    - during business hours - 1 Hour
    - after hours - next business day
  - (d) Equipment Repair/Replacement
    - during hours 4 Hours
    - after hours next business day
- 17.2 On site service support after normal business hours is only available to customers with a paid for AH service level agreement. Please contact your account manager for details.