

These General Terms and Conditions are applicable to Order Forms agreed and executed by the Company and the Customer. Each Order Form, when agreed and executed by the Company, shall incorporate and shall be subject to these General Terms and Conditions.

1 Definitions and interpretation

In the Agreement the following expressions shall unless the context otherwise requires have the following meanings:

Acceptable Use Policy: means the Company's acceptable use policy, as appended to these General Terms and Conditions in Schedule 1;

ADSL Failover Solution: means the back-up system utilising a dedicated BT ADSL compatible telephone line used to enable the Customer to receive the Services in the event of the failure of the primary method by which the Services are supplied to the Customer;

Agreement: means these General Terms and Conditions, the Order Form and the applicable Service Level Agreements;

Authorised Representative: shall have the meaning given in clause 12.1;

Business Day: means a day (other than a Saturday or Sunday) on which the banks are ordinarily open for business in the City of London;

Business Hours: means the hours of 9am to 5:30pm UK time during a Business Day;

Charges: means the charges payable by the Customer under the Agreement as set out in the Order Form (or as amended from time to time in accordance with the provisions of the Agreement), and all other fees, charges and expenses due from the Customer to the Company from time to time pursuant to the Agreement (together with any applicable VAT or other taxes or duties thereon);

Company: means AirGen IT Limited;

Confidential Information: means all information designated as confidential by either party, together with all such other information which relates to the business affairs, finance, products or services, customers or suppliers of that party; data, software programs, specifications, documentation, software listings, source code, object code, developments, trade secrets and know how; and all information which may reasonably be regarded as the confidential information of the disclosing party;

Consultancy Services: means the advisory and consultancy services to be provided by the Company to the Customer under the Agreement, as described in more detail in the Order Form;

Customer: means the person, firm or company named on the Order Form;

Customer Data: means the data processed by the Customer using the Services;

Data Protection Legislation: means the DPA 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003, all other applicable data protection laws, and all statutory instruments enacted or issued pursuant to such legislation and any related codes of practice relating to the protection of personal data issued by competent regulators from time to time;

DPA: means the Data Protection Act 1998 and the terms **process, processing, data controller** and **data processor** shall have the meanings set out in the DPA;

End User: means a person who receives or makes use of the Services provided to the Customer;

Equipment: means the equipment and hardware (together with any Software incorporated therein) provided by the Company, its agents or contractors to the Customer at the Site to enable the Customer to receive the Services (which, for the avoidance of doubt, remains the property of the Company);

Force Majeure: means any event outside the reasonable control of either party affecting its ability to perform any of its obligations (other than payment) under the Agreement including Act of God, fire, flood, lightning, volcano, earthquake or other natural disaster; war, revolution, act of terrorism, riot or civil commotion; strikes, lock-outs or other industrial action, whether of the affected party's own employees or others; failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services; failure of telephone networks; non-performance of suppliers or sub-contractors; compliance with any law or governmental order, rule, regulation or direction or any similar event;

General Terms and Conditions: means these general terms and conditions;

Initial Contract Term: means the initial contract term specified in the Order Form, subject to earlier termination pursuant to clause 14;

Installation: means the installation of the Equipment at the Site by the Company, its agents or subcontractors; **Installation Dates:** means the date or dates on which the Company is to install the Equipment at the Site as notified by the Company to the Customer following execution by the parties of an Order Form;

Intellectual Property: means patents, know-how, rights in inventions, processes and formulae, confidential information, copyright, rights in software, database rights, domain names, registered trademarks, unregistered trademarks and logos, service marks, goodwill, design right, unregistered designs and all and any other intellectual property rights subsisting anywhere in the world (whether registered or unregistered) and all applications for the same;

MAC Code: means the migration access code for broadband services;

Network: means the network and communications systems and infrastructure to which the Equipment connects which is used by the Company to provide the Services;

Order Form: means an Order Form in the Company's standard form;

Provisioning Date: means the date upon which the Equipment is confirmed by the Company as being ready for use by the Customer in accordance with clause 4.2;

Renewal Term: shall have the meaning given in clause 14.1;

RPI: means the United Kingdom retail prices index (all items) as published by the Office for National Statistics (or by any government department or other body upon which duties in connection with such index devolve) or such other index as replaces such index;

Service Level: means the service standard specifically identified as a 'Service Level' in a Service Level Agreement;

Service Level Agreement: means the service level agreement which is applicable to the provision of the Services, as specified in the Order Form;

Services: means such of the services as are provided by the Company from time to time, including, where applicable, the Consultancy Services, as specified in the Order Form;

Site: means the site or sites at which the Customer is to receive the Services, as detailed in the Order Form;

Software: means the third party software applications comprised in the Equipment, including all configurations, customisations, modifications and updates provided by the Company to the same;

Term: shall have the meaning set out in clause 14.1;

Year: means a period of 12 months commencing on the Provisioning Date and on each successive anniversary of the Provisioning Date and ending on the day before each successive anniversary of the Provisioning Date.

1 General

1.1 The headings to clauses are inserted for convenience only and shall not affect the interpretation or construction of the Agreement. Words imparting the singular shall include the plural and vice versa. Words imparting a gender include every gender and references to **persons** include an individual, company, corporation, firm or partnership.

1.2 All sums payable hereunder are exclusive of VAT or any other applicable tax or duty payable upon such sums which shall be added if appropriate at the rate prevailing at the relevant tax point.

1.3 References to any statute or statutory provision shall include

- (i) any subordinate legislation made under it,
- (ii) any provision which it has modified or re-enacted (whether with or without modification), and
- (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

1.4 The words and phrases **other, including** and **in particular** shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible. References to **in writing** include by e-mail, fax and letter. All references in the Agreement to clauses and Schedules are to the clauses of and Schedules to the Agreement.

2 Scope of Agreement

2.1 Each Order Form agreed and executed by the parties shall constitute an individual contract for the supply of the Services specified in that Order Form and shall be subject to these General Terms and Conditions and the applicable Service Level Agreements, as specified in the Order Form.

2.2 Unless stated to the contrary in any Order Form, in the event and to the extent only of any conflict or inconsistency between:

(a) any provision in the General Terms and Conditions and any provision in the Service Level Agreements, the provision in the General Terms and Conditions shall prevail;

(b) any provision in an Order Form and any provision in the General Terms and Conditions and/or the Service Level Agreements, the provision in the Order Form shall prevail.

3 Provision of Services

3.1 In consideration of the payment of the Charges by the Customer and the Customer's compliance with its obligations under the Agreement, the Customer engages the Company, and the Company agrees, to provide the Services to the Customer during the Term in accordance with and subject to the terms and conditions of the Agreement and any applicable Service Level Agreement.

3.2 The Company shall provide the Services with all reasonable skill and care and in a good workmanlike manner to good industry practice in accordance with the provisions of the Agreement.

3.3 The Company shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Site and that have been communicated to the Company, provided that it shall not be liable under the Agreement if, as a result of such observation, it is in breach of any of its obligations under the Agreement.

3.4 The Company reserves the right from time to time in its sole discretion to make operational changes to the Services, including to comply with any changes in applicable law, provided that such changes do not materially affect the scope of the Services.

3.5 In performing the Services, the Company shall operate as, and have the status of, an independent contractor and shall not operate or have the status of agent, employee or representative of the Customer.

3.6 The Company shall be entitled to sub-contract the whole or any part of the performance of the Services to any person provided that the Company remains responsible to the Customer for the performance of the Services in accordance with the terms of the Agreement.

4 Installation and Equipment

4.1 The Company shall install the Equipment at the Site on the Installation Dates.

4.2 Once the Company has carried out the Installation, the Company shall carry out provisioning of the Services and shall conduct testing to satisfy itself that the Equipment at each Site is able to connect to the Network and the Customer is able to receive the Services.

4.3 Upon the Company confirming to the Customer by telephone and/or email that the provisioning has been completed to the Company's satisfaction, Installation shall be complete, this point being the Provisioning Date.

5 The Customer's obligations

Carrier Appointments – The Customer is required to be present throughout the appointment. If you have asked another person to supervise the engineer they must be over the age of 18 and able to answer any questions or make decisions about your installation and line location. Engineers can arrive anytime within the appointment slot and may work beyond the appointed time to deliver the service.

If this appointment is not suitable, you MUST call us to change the appointment no later than 2 working days BEFORE the booked appointment. If the engineer is unable to gain access to your premises to complete the installation a new appointment will be required. This will delay your order and you may be charged for the aborted visit.

5.1 The Customer agrees to provide:

- (a) such co-operation and assistance to the Company, its agents or subcontractors, as is reasonably required by the Company in order to perform the Services in accordance with the Agreement;
- (b) such information as is required by the Company in order to provide the Services under the Agreement; and
- (c) access for the Company, its agents or subcontractors during Business Hours, or at such other times as may be agreed by the parties, to such premises, facilities, relevant systems and personnel as the Company may reasonably require from time to time to perform the Services in accordance with the Agreement.

5.2 The Customer shall:

- (a) use the Services in accordance with all applicable laws and regulations, including all telecommunications laws and Data Protection Legislation;
- (b) obtain all authorisations, approvals and consents, including landlord and management company consents, as are required in order for:
 - (i) the Customer to use the Services at the Site;
 - (ii) the Company and its agents and contractors to provide the Services at the Site and to carry out any alterations required to the Site in order for the Company to provide the Services to the Customer;
 - (iii) the Company and its agents and contractors to access the Site for the purposes of installing the Equipment and providing the Services;
- (c) use the Services in accordance with the Acceptable Use Policy; and
- (d) keep and maintain the Equipment in good condition and repair and in accordance with the manufacturer's specifications and any required environmental conditions advised by the Company to the Customer.

5.3 The Customer shall supply to the Company any documents, materials, assistance, data or other information (**Input Materials**) required in connection with the Consultancy Services. The Input Materials shall be supplied within sufficient time to enable the Company to perform the Consultancy Services in accordance with the Agreement.

5.4 The Company shall not be liable or deemed to be in breach of contract if the Input Materials are delayed, incomplete or inaccurate and the Company will be entitled to charge the Customer for any additional services necessary as a result.

5.5 Any recommendations or suggestions proposed by the Company in the performance of the Consultancy Services are given in good faith, but the Customer is solely responsible for satisfying itself of the suitability of any ideas, strategies, equipment or products recommended or suggested by the Company for its own particular purposes (notwithstanding that such purposes are known to the Company), and all such recommendations and suggestions are acted upon entirely at the Customer's own risk.

5.6 Where the Company agrees in the Order Form to facilitate the provision of the ADSL Failover Solution to the Customer:

- (a) the Customer acknowledges that a dedicated BT ADSL compatible telephone line (**ADSL Line**) is required to enable the ADSL Failover Solution to be provided, and the Customer is responsible for:
 - (i) ensuring that the Company is supplied with a phone number and/or (as requested by the Company) a MAC Code for the ADSL Line so that the ADSL Failover Solution can be provided;
 - (ii) any costs associated with the provision and maintenance of the ADSL Line;

(iii) testing the ADSL Line and the associated circuit regularly and otherwise ensuring it is operating satisfactorily and is capable of enabling the ADSL Failover Solution;

(b) the Company is not responsible for any additional costs incurred as a result of being supplied with a telephone line that is unsuitable for the Services;

(c) the Customer agrees not to use the ADSL Line for any purpose other than in connection with the provision of the ADSL Failover Solution.

5.7 In the event of any breach or suspected breach of the Acceptable Use Policy by the Customer or any of its End Users, in addition to and without prejudice to its other rights and remedies at law or otherwise under the Agreement, the Company may:

(a) monitor usage, and carry out investigations into potential misuse or abuse of the Services insofar as the same is carried out over or using the Network and the Customer shall co-operate with the Company in connection with such investigations; and/or

(b) involve and co-operate with law enforcement, regulatory and any other authorised agencies in the investigation and prosecution of crimes alleged or suspected to have been committed using the Services insofar as the same is carried out over or using the Network.

6 Proprietary rights

6.1 The Equipment and all Intellectual Property rights subsisting therein shall remain the property of the Company or its licensors. The Company hereby grants to the Customer a right to use the Equipment for the Term for the sole purpose of receiving the Services.

6.2 The Customer shall not:

(a) attempt to copy, modify, duplicate, create derivative works from, 1 frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means;

(b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of such Software;

(c) access all or any part of the Equipment or Software in order to build a product or service which competes with the Services;

(d) use the Services and/or Equipment to provide services to third parties outside the Site without the prior written consent of the Company (such consent not to be unreasonably withheld); or

(e) license, sell, rent, lease, transfer, assign, distribute, or otherwise commercially exploit, or otherwise make the Services and/or Equipment available to any third party outside the Site without the prior written consent of the Company (such consent not to be unreasonably withheld).

7 Charges and payment

The Customer must cover all charges enforced by The Carrier relating to aborted or missed Engineer visits, or visits where the Engineer left the premises without being able to complete their task in full.

7.1 The Customer will pay to the Company the Charges in accordance with this clause 7 and as otherwise agreed in writing from time to time by the Company.

7.2 Charges are payable monthly in advance and shall become payable from the date on which the Company notifies the Customer that Installation is complete pursuant to clause 4.2.

7.3 Unless otherwise agreed or specified by the Company, the Customer shall pay in full and cleared funds all Charges invoiced within 30 days of date of invoice. Time for payment is of the essence.

7.4 Unless otherwise expressly provided in the Agreement, all Charges payable under the Agreement are exclusive of VAT, which the Company shall add to its invoices at the appropriate rate.

7.5 The Customer shall be responsible for any additional costs or charges imposed by the landlord or management company for the Site.

7.6 The Company shall be entitled to increase Charges once per annum at the rate of increase of RPI during the previous 12 month period.

7.7 Without prejudice to any other right or remedy of the Company, if the Customer fails to make any payment under the Agreement on the due date for payment then the Company shall be entitled to:

(a) charge the Customer, and the Customer shall pay the Company on demand, interest on the unpaid amount at the rate of 8% per annum above the then current base rate of the Bank of England from the due date for payment until payment is received in full by the Company; and/or

(b) suspend supply and/or performance of all Services to the Customer until it has received payment in full, but without prejudice to the Customer's obligation to continue making payments in accordance with the Agreement during the period of any such suspension.

(c) In the event that the client is a partner/reseller and payment is not received within 90 days of the due date, AirGen IT reserve the right to directly engage, and enter a contract with the end user of the partner/reseller for the remaining term of the contract. The partner/reseller would still be liable for any outstanding amounts due and not recovered from the end user within the original contract term.

7.8 If any sums are due to the Customer from the Company, then the Company shall be entitled to exercise the right to set-off such sums against any payments due to the Company from the Customer under or in relation to this or any other agreement. All amounts due to the Company from the Customer shall be paid by the Customer to the Company in full without any deduction or withholding and the Customer shall not be

entitled to claim set-off against the Company in relation to the payment of the whole or part of any such amount.

7.9 Cessations

A cessation charge will apply on all cessations of End User Access Services. If a cessation of an End User Access Service occurs during or before the Minimum Service Period for any reason other than because of a Migration, the End User will be required to pay a cessation charge.

Cancellation Charges

The Charges levied for cancelling an leased line order prior to its Go-Live Date. Where the End User or Partner cancels or terminates any Order or Service Schedule: prior to the Go-Live Date, it shall be liable to the carrier for the applicable Cancellation Charges;

Pre-planning (up until site survey) approx. £750

Committed (once site survey has been completed) approx. £1500-£3000

8 Warranties

8.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform the Agreement.

8.2 If the Customer can prove to the Company's reasonable satisfaction that, due to the Company's own act or omission, the Company has failed to perform the Consultancy Services in accordance with the Agreement, then the Company may at its option remedy such breach:

(a) by re-executing the relevant part of the Consultancy Services free of charge up to the amount of the Charges received by the Company for the provision of such Consultancy Services (exclusive of any VAT); or

(b) by repaying or crediting to the Customer that part of the Charges paid by the Customer to the Company relating to the provision of the relevant part of the Consultancy Services (exclusive of any VAT), and any such action shall discharge in full the Company's liability to the Customer for such failure to perform the Consultancy Services.

8.3 The Customer must notify the Company in writing of any claims under clause 8.2 within 14 days of the date when the relevant Services were performed.

8.4 The Company shall have no liability for any defects, faults, noncompliance, or shortcomings in the Equipment and/or Services, or for any failure to meet any Service Level, to the extent that any are caused by:

(a) any act, omission and/or default of the Customer, including any failure of the Customer to comply with its obligations pursuant to the Agreement;

(b) any unauthorised, improper, incomplete and/or inadequate maintenance of Equipment by the Customer and/or any third party;

(c) the use of any software, hardware, services and/or system(s) which, in each case, are not part of the Equipment and are not compatible with the Equipment or which are defective;

(d) any amendment to or modification and/or alteration of the Equipment which has not been undertaken by or with the prior written approval of the Company;

(e) any unauthorised and/or improper use and/or operation of the Equipment or the Services;

(f) failure by the Customer to meet the Equipment manufacturer's specifications or any environmental conditions advised by the Company to the Customer, and to the extent that any of the above apply, the Company shall be entitled to charge the Customer a one-off additional fee of £50 in respect of each Site which is affected by any matter listed in subclauses (a) to (f) of this clause 8.4.

8.5 The Company gives no warranty that the use of the Services will be uninterrupted or free of virus or bugs.

8.6 Except as expressly and specifically provided in the Agreement:

(a) all warranties, conditions, terms, representations, statements, undertakings and obligations implied by statute, common law, custom, usage or otherwise are, to the fullest extent permitted by applicable law, hereby excluded from the Agreement; and

(b) the Equipment and Services are provided to the Customer on an 'as is' basis.

9 Limitation of Liability

9.1 This clause 9 sets out the entire financial liability of the Company to the Customer in respect of:

(a) any breach of the Agreement;

(b) any use made by the Customer of the Services and/or Equipment; and

(c) any representations, statement or tortuous act or omission (including negligence) arising under or in connection with the Agreement.

9.2 If any of the Services fail to conform to the Service Levels in the relevant Service Level Agreement, the Customer shall be entitled to the remedies specified in the relevant Service Level Agreement, which shall be the Customer's sole and exclusive remedy for such failure.

9.3 The Company shall not be liable for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over the Network, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications networks and facilities.

9.4 Nothing in the Agreement shall exclude or restrict either party's liability for death or personal injury resulting from that party's negligence, or for fraud, or for fraudulent misrepresentation, or for any other liability which cannot be excluded or limited under applicable law.

9.5 The Company shall not in any circumstances be liable to the Customer for any of the types of loss listed below whether arising from negligence, breach of contract or otherwise. Those types of loss are as follows:

- (a) loss of profits;
- (b) loss of revenue;
- (c) economic loss;
- (d) loss of business or contracts;
- (e) loss of anticipated savings or goodwill;
- (f) losses arising from loss of data;
- (g) consequential, special or indirect losses;
- (h) any losses suffered by the Customer arising from any claim against it by a third party for any of the above types of loss.

9.6 The Company shall not be held in breach of the Agreement, and shall not be liable to the Customer for any loss or damage suffered or incurred by the Customer or any third party as a result of:

- (a) any failure to provide the Services in accordance with the Agreement as a result of any act or omission of the Customer or any End Users;
- (b) the Company's compliance with any instruction or direction given by the Customer;
- (c) the absence of any authorisation, consent or approval required to be obtained by the Customer pursuant to clause 5.1(b); or
- (d) the acts or omissions of the Customer or any End Users.

9.7 If the Company's compliance with the Service Levels or the performance of any of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer, or any of its End Users, including any delay or refusal to permit the Company, its agents or contractors, access to the premises, facilities, relevant systems and personnel for the purpose of providing the Services:

- (a) the Service Levels shall not apply for the period during which the Company, its agents or contractors, are delayed or prevented from performing the Services; and
- (b) the Company shall not be liable for any costs, charges or losses sustained by the Customer that arise directly or indirectly from such prevention or delay.

9.8 The Charges have been calculated on the basis that the Company will exclude or limit its liability as set out in the Agreement and the Customer agrees that:

- (a) the Customer shall insure against or bear itself any loss for which the Company has excluded or limited its liability in the Agreement; and
- (b) the Company shall have no further liability to the Customer.

9.9 Subject to clause 9.1, the Company's entire liability whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise:

- (a) arising out of or in connection with the Consultancy Services, shall be limited to the Company's Charges for the Consultancy Services;
- (b) otherwise arising out of or in connection with the Agreement, shall be limited in each Year to 50% of the Charges payable by the Customer under the Agreement in respect of that Year, as set out in the Order Form (or as amended from time to time in accordance with the provisions of the Agreement).

10 Confidentiality and Publicity

10.1 Each party shall keep and procure to be kept secret and confidential all Confidential Information belonging to the other party disclosed or obtained as a result of the relationship of the parties under the Agreement and shall not use nor disclose the same save or the purposes of the proper performance of the Agreement or with the prior written consent of the other party.

10.2 Confidential Information may only be disclosed on a need-to-know basis to a party's:

- (a) legal advisors in order to advise it on its rights or obligations under the Agreement; and
- (b) employees, consultants, or agents, provided that disclosure is made solely for the purpose of performing its obligations or exercising its rights under the Agreement, provided in each case that such disclosure is subject to obligations equivalent to those set out in the Agreement and each party shall procure that any person to whom Confidential Information is disclosed complies with such obligations. Each party shall continue to be responsible to the other party in respect of any disclosure or use of the disclosing party's Confidential Information by a person to whom disclosure is made by the receiving party.

10.3 The obligations of confidentiality in this clause 10 shall not extend to any information which the receiving party can show to the reasonable satisfaction of the disclosing party:

- (a) is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under the Agreement; or
- (b) was in its written records prior to the disclosure by the disclosing party; or
- (c) was independently disclosed to it by a third party entitled to disclose the same; or
- (d) is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction, provided that such information is disclosed only to the extent actually required by law and prior to such disclosure the receiving party gives the disclosing party such prior notice that it is reasonably able to give in order to give the disclosing party the opportunity to seek a protective order for the Confidential Information.

10.4 Without prejudice to any other rights or remedies that the disclosing party may have, the receiving party acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the receiving party of this clause 10. Accordingly, the disclosing party shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of this clause 10.

10.5 The Customer agrees that the Company shall be entitled to refer to being a service provider of the Customer and may publicise such information as the nature of such services and overall contract amount and term without the Customer's consent.

10.6 The obligations under this clause 10 shall survive termination of the Agreement.

11 Customer Data

11.1 The Customer shall own all rights, title and interest in and to the Customer Data and shall have sole responsibility for ensuring the security, legality, reliability, integrity, accuracy and quality of the Customer Data.

11.2 Unless otherwise agreed, the Company shall not be responsible for undertaking back-up of any Customer Data and the Customer shall be solely responsible for undertaking back-up of the Customer Data and shall ensure that such back-up copies are recorded on media from which the Customer Data can be re-loaded by the Customer in the event of any corruption or loss thereof and kept safe.

11.3 The Customer shall be solely responsible for obtaining all necessary consents in respect of its processing of Customer Data.

12 Change Control

12.1 Each party will appoint a suitably experienced and qualified representative who shall be the primary representative of that party in relation to the management and administration of the Services (**Authorised Representative**).

12.2 If either of the parties wishes to request a change to the Services, that party's Authorised Representative will submit a change request to the other party's Authorised Representative describing the proposed change. The receiving party will provide a response to the change request within 14 days (or such other time as is agreed by the Authorised Representatives) and where the party requesting the change is the Customer, the Company will in its response to a change request from the Customer issue a new Order Form.

12.3 If the parties agree to proceed with the change, the Authorised Representatives shall agree and sign the new Order Form issued by the Company. In the event that the parties are unable to agree on the proposed

change and unless and until a new Order Form is signed by the Authorised Representative, the party submitting the change will withdraw the change request and the Agreement shall continue without change.

13 Indemnity

13.1 The Customer shall defend, indemnify and hold harmless the Company against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with:

- (a) the use of the Services and/or Equipment by the Customer or any of its End Users save to the extent caused by any negligence or wilful misconduct of the Company;
- (b) any content or communications transmitted, sent or stored by the Customer or any of its End Users using the Services;
- (c) any failure by the Customer to obtain the necessary authorisations, approvals and consents for the use and provision of the Services at the Site pursuant to clause 5.2(b); and
- (d) any breach by the Customer or any of its End Users of any of the terms of the Agreement.

14 Term and Termination

14.1 The Services shall commence on the Provisioning Date and, subject to earlier termination by either party pursuant to this clause 14, the Agreement shall continue in force for the Initial Contract Term and thereafter the contract will continue unless either party gives written notice to the other to terminate the Agreement, such notice not to expire prior to the expiry of the Initial Contract Term.

90 days written notice on leased lines (Ethernet, wireless, GEA, EFM etc)

30 days written notice on FTTC, ADSL and HVX licence + bolt on products

14.2 Either party may immediately terminate the Agreement without payment of compensation or other damages caused to the other party solely by such termination by giving notice in writing to the other party if any one or more of the following events happens:

- (a) the other party commits a material breach of any of its obligations under the Agreement and such material breach is incapable of remedy;
- (b) the other party fails to remedy, where it is capable of remedy, or persists in any material breach of any of its obligations under the Agreement (save as to payment) after having been required in writing to remedy or desist from such breach within a period of 90 days;
- (c) any sum payable under the Agreement is not paid within seven days of its due date for payment in accordance with the Agreement;
- (d) the other party proposes a voluntary arrangement within the meaning of Section 1 or Section 253 of the Insolvency Act 1986, or an interim order is

made in relation to the other party under Section 252 of the Insolvency Act 1986, or any other steps are taken or negotiations commenced by the other party or any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving the other party and any of its creditors;

(e) the other party has any distress or execution levied on its assets which is not paid out within seven days of its being levied;

(f) the other party is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or calls a meeting for the purpose of passing a resolution to wind it up, or such a resolution is passed, or a resolution is passed by the directors of the other party to seek a winding up or administration order, or the other party presents, or has presented, a petition for a winding up order, or presents, or has presented, a petition to appoint an administrator, or has an administrative receiver, or receiver appointed over all or any part of its business, undertaking, property or assets;

(g) the other party stops or suspends making payments (whether of principal or interest) with respect to all or any class of its debts or announces an intention to do so or the other party suspends or ceases or threatens to suspend or cease to carry on its business;

(h) a secured lender to the other party takes any steps to obtain possession of the property on which it has security or otherwise

14.3 Without prejudice to any other rights or remedies the Company may have at law or under the Agreement:

(a) the Company may, in its sole discretion, suspend the use of the Network and/or Services by the Customer:

(i) in the event of a breach or suspected breach of the Acceptable Use Policy by the Customer, or any of its End Users; or

(ii) if the Company otherwise considers, in its sole discretion, that such suspension is required to maintain or protect the security or operations of:

(A) the Network and/or Services; and/or

(B) the computer networks or systems of the Company or any other customer of the Company where the Company determines that such security or operations are under potential, threatened, or actual attack or compromise;

(b) the Company may terminate the Agreement in the event of a breach by the Customer or any of its End Users of the Acceptable Use Policy.

14.4 The termination of the Agreement shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.

14.5 Any termination of the Agreement (for whatever reason) shall not affect the coming into force or the continuance in force of any provision of

the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

15 Consequences of termination

15.1 On the expiry or termination of the Agreement (for whatever reason):

(a) the Customer shall immediately cease (and shall procure that its employees, contractors and representatives immediately cease) all use of the Equipment and the Services;

(b) the Customer shall immediately surrender possession of the Equipment in good condition to the Company (fair wear and tear excepted) and the Customer shall provide for the Company access on reasonable notice to its premises, facilities and equipment for the purpose of removing the Equipment; and

(c) without prejudice to clause 15.2, the Customer shall forthwith make payment of all sums due and owing to the Company and the Company shall be entitled to submit an invoice to the Customer for Services rendered up until the date of termination and the Customer shall make prompt payment of such invoice within 30 days of date of invoice.

15.2 Upon acceptance by the Company of any repudiatory breach by the Customer as terminating the Agreement, the following amounts shall become immediately due and payable by the Customer to the Company:

(a) all arrears of Charges and all other amounts which have accrued under the terms of the Agreement; and (b) all Charges which would have been payable but for such termination during the initial contact term specified in the Order Form, subject to a discount of 5% to reflect accelerated receipt.

(b) cease of a 30 day FTTC/SoGEA/ADSL/FTTP broadband product by the Customer within the first 12 months will include a £50 cease fee to the final invoice.

16 Force Majeure

16.1 Neither party shall be liable for any breach of its obligations under the Agreement resulting from Force Majeure events. Each of the parties agrees to give notice forthwith to the other upon becoming aware of a Force Majeure event such notice to contain details of the circumstances giving rise to the Force Majeure event.

16.2 If a Force Majeure event continues for a period of 30 days or more then either party shall be entitled to terminate the Agreement on written notice to the other party. Neither party shall have any liability to the other in respect of the termination of the Agreement as a result of a Force Majeure event.

16.3 Irrespective of the occurrence of any Force Majeure event, the Customer shall continue to pay all Charges due under the Agreement unless and until such time as either party serves notice to terminate the Agreement pursuant to clause 16.2.

17 Assignment

17.1 The Customer shall not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Agreement without the prior written consent of the Company (such consent not to be unreasonably withheld).

17.2 The Company shall be entitled (at its sole discretion) to assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Agreement.

18 Entire agreement

18.1 The Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

18.2 Each of the parties acknowledges and agrees that in entering into the Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in the Agreement.

19 General

19.1 Nothing in the Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

19.2 The Agreement does not confer any rights on any person or party (other than the parties to the Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999. 19.3 No failure or delay by a party to exercise any right or remedy provided to it under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

19.4 Each of the parties shall, and shall use their reasonable endeavours to procure that any necessary third parties shall, execute and deliver to the other party such other instruments and documents and take such other action as is necessary to fulfil the provisions of the Agreement in accordance with its terms.

19.5 Subject to the specific limitations set out in the Agreement, no remedy conferred by any provision of the Agreement is intended to be exclusive of any other remedy except as expressly provided for in the Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or existing at law or in equity, by statute or otherwise.

19.6 Except as otherwise expressly specified in the Agreement, each party shall bear its own costs in relation to the negotiation, preparation and completion of the terms of the Agreement.

19.7 All variations to the Agreement shall be in writing. The parties agree that variations can be agreed between the parties by e-mail provided that the emails originate from the email address specified in clause 20.1.

19.8 If any provision of the Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20 Notices

20.1 A notice given under the Agreement must be in writing and may be served by personal delivery or by sending the notice by registered post, fax or e-mail at the address given below or at such other address as the relevant party may give for the purpose of service of notices under the Agreement:

To the Company:

Address: AirGen IT Limited,
6 Edison Village, Nottingham Science & Technology Park, Nottingham,
England, NG7 2RF
Email: info@airgenit.co.uk

To the Customer:

Address: As specified on the Order Form
Email: As specified on the Order Form

20.2 A notice is deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of fax, at the time of transmission printed on the transmission confirmation sheet;
- (c) in the case of e-mail, at the time of sending the e-mail; or

(d) in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting.

20.3 To prove service, it is sufficient to prove that the notice was transmitted by fax to the fax number of the relevant party and a successful transmission sheet exists or, in the case of e-mail that the e-mail was sent to the correct e-mail address as set out above and receipt was acknowledged by return email from the email address to which it was sent or otherwise by an authorised representative of the receiving party, and in the case of post, that the envelope containing the notice was properly addressed and posted.

20.4 The provisions of this clause 20 shall not apply to the service of any proceedings or other documents in any legal action.

21 Governing Law and Jurisdiction

21.1 The Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including noncontractual disputes or claims) are governed by and construed in accordance with the laws of England.

21.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with the Agreement, its subject matter and/or its formation (including non-contractual disputes or claims).

Schedule 1

Acceptable Use Policy

1 Definitions and Interpretation

1.1 Capitalised expressions shall have the meanings given in the General Terms and Conditions.

1.2 The following additional definitions shall apply in this Schedule 1.

1.3 **Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses, harmful or malicious code, and other similar things or devices

2 Acceptable Use Policy

2.1 The Customer shall not, and shall procure that its End Users do not use the Services and/or Network to store, distribute or transmit any Viruses, or any material that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purposes or effect, or which facilitates illegal activity;
- (c) depicts sexually explicit images or promotes unlawful violence;
- (d) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity;
- (e) causes damage or injury to any person or property;
- (f) is in breach of any applicable laws or regulations; or
- (g) infringes any Intellectual Property right or other proprietary right or right of privacy of a third party.

2.2 The Customer shall not use the Services to:

- (a) transmit or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam); or
- (b) intercept or monitor data or messages while they are being transmitted over the Network.

2.3 The Customer shall not and shall procure that its End Users shall not use the Services to access any computer, system, network, or data without authorisation or in a manner which exceeds authorisation including, any attempt to:

- (a) retrieve, alter, or destroy data;
- (b) probe, scan or test the vulnerability of a system or network; or
- (c) breach or defeat system or network security, authentication, authorisation, confidentiality, intrusion detection, monitoring, or other security measures.

2.4 The Customer shall not, and shall procure that its End Users shall not, use the Services to:

- (a) impersonate any party or entity by adding, removing, or altering header information of network, email, or other messages transmitted over the Network;
- (b) transmit over the Network messages that have been electronically signed using a fraudulently obtained public key certificate or with a forged electronic signature; or
- (c) use the Network or any of the Services to commit any other form of impersonation or forgery.

2.5 The Customer shall not, and shall procure that its End Users shall not, knowingly interfere with or disrupt the business operations, service, or function of the Company, the Network, or any computer, host, network, or telecommunications device connected to or via the Network.

2.6 The Customer shall not, and shall procure that its End Users shall not, knowingly tamper with or attempt to gain unauthorised access to systems, network or other device of the Company.

2.7 The Customer shall promptly report to the Company any event, condition, or activity indicating a possible or actual:

- (a) breach of this Acceptable Use Policy;
- (b) breach or compromise of the security of the Network and/or the Services, including any event, condition, or activity occurring within any other telecommunications or computer network or systems that could affect the security of the Network and/or the Services.