

TERMS & CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The following words have these meanings in this Agreement, unless the contrary intention appears:
- Addendum** means any addendum or supplements executed by Customer and accepted by Airzed for additional or supplemental services.
- Agreement** means the agreement for the Services made between Airzed and Customer in accordance with these terms and conditions, the Registration Form, the Addendum and other documents which are expressly agreed to form part of the Agreement.
- Customer** means the sole proprietorship, partnership, company, entity or individual specified in Section B of the Registration Form whose application for the Services has been accepted by Airzed.
- Customer Equipment** means the equipment, software and all facilities to be procured, installed and maintained by Customer at Customer's premises in order to use the Services, including without limitation, cabling and wiring required to connect the Customer Equipment to the Airzed Network as well as the horizontal cabling from Customer's premises to the Airzed Network.
- Initial Term** shall have the meaning as set out in Clause 6.1.
- Internet** means a global network of interconnected computer networks, each using the Transmission Control Protocol/Internet Protocol and/or such other standard network connection protocols as may be adopted from time to time, which is used to transmit content that is directly or indirectly delivered for display to an end user whether such content is delivered through on-line browsers, off-line browsers or through "push" technology, electronic mail, broadband distribution, satellite, wireless or otherwise.
- Logon Detail** means the user identification detail and accompanying password supplied to Customer under this Agreement for access to the Services.
- Airzed** means Airzed Broadband Sdn Bhd (599069-V) including its successors and assigns.
- Airzed Network** means equipment, software and facilities operated by Airzed to enable the provision of the Services to Customer.
- Airzed's Web Site** means the web site operated by Airzed located at URL <http://www.airzed.com> or such other URL as may be notified by Airzed to Customer from time to time.
- Business Working Days** means from Mondays to Fridays, excluding public holidays in Kuala Lumpur and Selangor, or such other working hours as may be notified by Airzed to Customer from time to time.
- Registration Form** means Customer's duly completed application for registration to subscribe to the Services which has been accepted by Airzed, the form and content of which are as set out above.
- Services** means the high speed connectivity to the Internet using wireless broadband or such other technology from time to time as provided by Airzed to Customer pursuant to the Agreement and any value-added supplemental or additional features that may be provided by Airzed from time to time.
- Service Charges** mean the recurring charges payable by Customer to Airzed for the provision of the Services as specified or determined in accordance with the Agreement.
- Service Commencement Date** means the date the Services are made available to Customer as notified by Airzed to Customer.
- 1.2 In the Agreement, unless the contrary intention appears:
- a reference to a statutory provision includes that provision as modified or re-enacted from time to time so far as such modification or amendment applies or is capable of applying to any transaction entered into, under or in connection with the Agreement;
 - the singular shall include the plural and vice versa;
 - a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
 - words denoting one gender include all genders and words importing persons shall include firms, associations, bodies corporate and unincorporated;
 - a reference to "day(s)" shall mean a twenty-four (24) hours period as in calendar day and a reference to "business day(s)" shall mean Mondays to Fridays, excluding Saturdays, Sundays and public holidays in Kuala Lumpur and Selangor; and
 - where more than one (1) party is referred to as "Customer", their obligations are joint and several.
- 1.3 Headings are inserted for convenience only and do not affect the interpretation of the provisions of the Agreement.
- 1.4 The rule of construction to apply to the interpretation of the provisions of the Agreement.
- 1.5 Where any thing is due to be done on a day which is not a business day, it must be done on the next business day.
- 1.6 References to the Agreement shall mean the Agreement as amended from time to time in accordance with the provisions herein.
- ### 2. PROVISION OF SERVICE
- 2.1 Subject to acceptance by Airzed of Customer's application for the Services, Airzed agrees to provide the Services to Customer, in accordance with the terms and conditions of the Agreement.
- 2.2 Unless otherwise indicated in this Agreement, the Services shall not include the provision or maintenance of any Customer equipment required by Customer to connect to the Airzed Network. Customer agrees that Customer shall be solely responsible for procuring and maintaining the Customer Equipment.
- 2.3 Airzed does not guarantee or warrant the availability of the Services or continuous, uninterrupted or secure access to the Internet. Airzed reserves the right to suspend or interrupt the Services or any part thereof at any time for operational or technical reasons or in an emergency or in accordance with Clause 6.5, with or without notice to Customer.
- 2.4 All hardware, software and other related equipment installed at Customer's premises shall remain the sole property of Airzed. Airzed reserves the right to replace, update, modify and make necessary changes to the equipment during the term of the Agreement. Upon termination of the Agreement, Airzed shall uninstall and remove all its equipment from the Customer's premises where the equipment was installed.
- ### 3. SERVICE CHARGES
- 3.1 Customer shall pay Airzed the Service Charges and such other fees or charges imposed by Airzed in accordance with Airzed's prevailing policy. The Service Charges payable for the Services shall be as specified at Airzed's Web Site, or as otherwise notified to Customer by Airzed from time to time in accordance with the provisions herein. The Service Charges shall be payable in advance and at such intervals or at such other time as may be specified by Airzed from time to time. The Service Charges shall commence from the Service Commencement Date.
- 3.2 Customer shall promptly pay to Airzed all charges and such other amount due and payable pursuant to the Agreement irrespective of whether a demand is made by Airzed and shall continue to be liable for any applicable charges during the period of interruption or loss of the Services from any cause whatsoever.
- 3.3 All payments due to Airzed under the Agreement shall be made in full, without deduction for any reason, including but not limited to, set-off, counterclaim or other equitable or lawful claim.
- 3.4 Customer shall be responsible for the payment of all taxes, duties (including without limitation, stamp duty payable on the Agreement), fees and other charges imposed by any government authority in relation to the Agreement (other than taxes payable on the overall income of Airzed).
- 3.5 Interest is payable by Customer on an outstanding charge under the Agreement at the rate of 1.0% per month on such overdue amounts (whether before or after judgment) and Customer shall continue to be liable to pay such amounts, including any accrued interest thereon, until full settlement thereof.
- 3.6 In the event the Initial Term (as hereinafter defined in Clause 6.1) where the Service Charges is fixed for the duration of the Initial Term, Airzed may at its sole discretion vary its charges from time to time by written notice to Customer. All variations will take effect from the date specified in the notice and Customer shall be bound to observe and comply with such variations. The Service Charges for the Initial Term shall be as specified at Airzed's Web Site on the date that Customer submits the Registration Form to Airzed or as otherwise agreed in writing.
- 3.7 Any value added, additional or supplement services requested by Customer and agreed to be provided by Airzed shall be separately charged by Airzed.
- 3.8 Airzed may in its absolute discretion and at any time, set-off, consolidate or combine accounts or transfer any monies outstanding to the credit of Customer's account with Airzed or any of its related corporations (as defined in section 6 of the Companies Act 1965) of whatever description towards the reduction or discharge of any sum due to Airzed by Customer under the Agreement.
- ### 4. CUSTOMER'S OBLIGATIONS
- 4.1 Customer shall, at its sole expense, procure, install and maintain the Customer Equipment required to facilitate access to the Services to enable connection to the Airzed Network.
- 4.2 Customer shall be responsible for ensuring the compatibility of the Customer Equipment with the Airzed Network. In the event that changes are introduced to the Airzed Network, Customer shall be responsible for ensuring the continued compatibility of the Customer Equipment with the Airzed Network and Customer shall have no claim whatsoever against Airzed arising therefrom.
- 4.3 The Customer Equipment must be configured and run at all times in compliance with the manufacturer's specifications, including power output, power consumption and clearance requirements.
- 4.4 Customer shall not:
 - a. send or disclose Logon Details to any person other than Airzed; or
 - b. store Logon Details in any form, whether coded or unencoded, in a location where they are capable of being read by anybody other than Customer.
- 4.5 Customer shall:
 - a. at all times use only Customer's own Logon Details for accessing the Services;
 - b. use only the e-mail address which legally belongs to Customer and shall not in any way misrepresent or pass-off an e-mail address not belonging to Customer as Customer's e-mail address;
 - c. be responsible for the secure storage of Logon Details; and
 - d. be responsible for all usage of, and charges for, the Services.
- 4.6 Customer shall not use the Services:
 - a. to send unsolicited or unwelcome or bulk electronic mail messages of any kind to anyone;
 - b. in such a way as to cause excessive or disproportionate load on the Services or the Airzed Network ("Excessive Usage"). Customer shall be responsible for ensuring the compatibility of the Customer Equipment with the Airzed Network. Excessive Usage. Airzed may notify Customer when Customer causes Excessive Usage and direct that Customer reduces usage of the Services. Airzed may provide Customer suggestions on how to more effectively use the Services or to reverse Customer's usage trend. If Customer does not reduce usage accordingly within two (2) weeks from Airzed's notification, Customer shall be deemed to be in default of its obligations under this Agreement and Airzed will be entitled to immediately terminate the Services pursuant to Clause 6.4 without further notice;
 - c. in such a way as to improperly restrict, inhibit or degrade any other customers' use of the Services through the use of "sniffing" or "scanning" software or otherwise;
 - d. for any unlawful purposes such as, but not limited to vice, gambling or other criminal purposes whatsoever or for sending to or receiving from any person or displaying any message or posting which is offensive on moral, religious, communal or political grounds, or is abusive or of an indecent, obscene or menacing character;
 - e. restrict, inhibit, disrupt, degrade or impede Airzed's ability (in the sole judgement of Airzed) to deliver the Services, backbone, network nodes and other network services and components (both software and hardware) of the Airzed Network;
 - f. for any purpose which is against public interest, public order or national harmony;
 - g. to publish defamatory, infringing, obscene or other unlawful material;
 - h. in connection with the infringement of the copyright, patent, trademark, trade secret or other proprietary rights of any third party or rights of publicity or privacy;
 - i. interfere with, damage, disrupt or unlawfully use or gain access to any service, equipment or computer network without authorisation from the owner of the said service, equipment or computer network;
 - j. to resell or otherwise distribute or share the Services (or any portion thereof) with a third party without the prior written consent of Airzed;
 - k. in violation of any laws relating to unfair competition, antidiscrimination or false advertising; or
 - l. that result in distribution of viruses, trojan horses, worms, time bombs, cancelbots, or other similar harmful or deleterious programming routines.
- 4.7 Customer shall not at any time, remove, tamper, uninstall, allow or facilitate access to Airzed's equipment by any third party.
- ### 5. SECURITY OF DATA
- 5.1 Customer acknowledges that Airzed shall not be liable for the security of Customer's data on any of the Customer Equipment or passing over the Services or the Airzed Network and that Airzed shall have no obligation to ensure, and makes no representations or warranties concerning the security of such data. Customer shall be solely responsible for the data received, stored or transmitted through the Services or the Airzed Network.
- 5.2 Customer agrees that Airzed is not liable for any unauthorised access to Customer's data even where the access occurs as a result of a fault in the Airzed Network or any other equipment or software owned, operated or supplied by Airzed.
- ### 6. TERM AND TERMINATION
- 6.1 The Agreement shall commence on the Service Commencement Date and continues for a period of two years ("Initial Term"). Upon the expiry of the Initial Term, the Agreement shall automatically extend for further terms of one (1) year (each term called "Renewal Term") unless Airzed or Customer gives at least three (3) months prior written notice to the other party of its intention not to renew the Agreement for the subsequent term.
- 6.2 Notwithstanding Clause 6.1, Airzed may at any time discontinue the Services or any part thereof or terminate the Agreement without having to give any reason on thirty (30) days written notice to Customer. Airzed shall have no liability to Customer for discontinuance of the Services or any part thereof or termination of the Agreement pursuant

- to this Clause except to refund to Customer within thirty (30) days from the effective date of discontinuance or termination (as the case may be) any advance Service Charges paid by Customer to Airzed for such part of the Services discontinued or for the period after the effective date of discontinuance or termination (as the case may be).
- 6.3 Customer shall not be entitled to terminate the Agreement at anytime and for any reason whatsoever (save for termination pursuant to Clauses 6.6 or 12.1) during the Initial Term. If the Agreement is terminated by Customer for any reason whatsoever (save for termination pursuant to Clauses 6.6 or 12.1) or by Airzed pursuant to any of the situations specified in Clause 6.4 below prior to the expiry of the Initial Term, Customer shall be liable to pay Airzed in full the Service Charges for the remainder of the Initial Term, as the case may be ("Termination Sum") and all charges and amounts outstanding as at the date of termination including accrued interests.
- 6.4 In the event Customer:
 - a. fails to pay in full any sums or charges due and payable pursuant to the Agreement within seven (7) days of the relevant due date for payment; or
 - b. is otherwise in default of its obligations under the Agreement and has not remedied the default within fourteen (14) days of receipt of written notice from Airzed requiring remedy of such default; or
 - c. is insolvent or takes any corporate action or other steps are taken or legal proceedings are commenced from its winding up, liquidation or dissolution (other than for purposes of solvent reconstruction on terms approved by Airzed) or for the appointment of a receiver, receiver and manager, official manager, liquidator, provisional liquidator, trustee, or similar officer over Customer or any or all of its revenues or assets;then Airzed shall be entitled by written notice to Customer to treat such failure, breach or default as a repudiation of the Agreement and to immediately terminate the Agreement and the Services.
- 6.5 Without prejudice to Airzed's rights under Clause 6.4, Airzed may at its sole discretion elect to suspend the Services or any part thereof, with or without notice to Customer, if it considers that Customer has breached any of its obligations under the Agreement. Any such suspension shall not be a breach by Airzed of the Agreement. All charges shall remain due and payable during such period of suspension by Airzed of the Services. In the event of a suspension, Airzed reserves the right to charge Customer a fee for the re-commencement of the Services.
- 6.6 In the event Airzed is in material default of any of its obligations under the Agreement and has not remedied the default within thirty (30) days of receipt of written notice from Customer requiring the remedy of the default, Customer shall, by written notice to Airzed, be entitled to terminate the Agreement.
- 6.7 On termination of the Agreement for any reason whatsoever, Customer shall pay Airzed (i) all charges and amounts due and unpaid as at the termination date and any accrued interests thereon; and (ii) the Termination Sum in the event termination occurs before the expiry of the Initial Term (save for termination pursuant to Clauses 6.6 or 12.1).
- 6.8 Termination of the Agreement by either Customer or Airzed for any reason whatsoever shall be without prejudice to any other rights, remedies or claims Airzed may have against Customer pursuant to the Agreement or at law or in equity in respect of any antecedent breach by Customer of any provision of the Agreement. Unless otherwise expressly provided in the Agreement, all remedies provided for in the Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to Airzed at law, in equity or otherwise.
- ### 7. INDEMNITY
- 7.1 Customer agrees to indemnify and hold Airzed and its parent company, subsidiaries, affiliates, successors and assigns, and their respective employees, officers, suppliers, contractors and agents harmless from and against any and all claims, demands, damages, costs, charges liabilities and expenses (including attorney's fees and costs) of every nature directly and indirectly, arising out of or in connection with:
 - a. any claims for libel, invasion of privacy, infringement of patent, trademark, copyright or intellectual property right or other proprietary right, breach of confidence or breach of any law or regulation whatsoever arising from or attributable to the Customer Equipment, Customer data or the use of the Services (whether with or without Customer's authorisation);
 - b. the use of the Services by a person using the Logon Details with, or without, Customer's authority;
 - c. any non-compliance with any provisions of this Agreement by Customer;
 - d. any negligent or willful act of Customer or any of its officers, employees, contractors or agents which would have been a breach of this Agreement if performed by Customer using the Logon Details; and
 - e. any damage to property or personal injury (including death) arising from or in connection with the Customer Equipment.
- ### 8. CUSTOMER'S WARRANTIES
- 8.1 Customer warrants that:
 - a. it has the power to enter into and observe all its obligations under the Agreement;
 - b. all consents, qualifications and authorisations from all necessary government and other authorities for the performance by Customer of its obligations hereunder have been duly obtained and are in full force and effect; and
 - c. the execution, delivery and performance by Customer of the Agreement have been duly authorised by all necessary corporate action and that the Agreement constitutes a valid and effective and legally binding contract and shall be enforceable against Customer in accordance with the terms herein.
- ### 9. DISCLAIMERS AND LIMITATION OF LIABILITY
- 9.1 The Services are provided on an "as is" basis and Customer expressly acknowledges that the Services are suitable for its purpose. Customer accordingly agrees and acknowledges that no condition, warranty or representation of any kind has been given or made by Airzed or the employees, officers, personnel, representatives, customers or agent (collectively "Personnel") of Airzed with respect to or in respect of the Services and all other conditions, warranties, guarantees or representation, express or implied, statutory or otherwise, (i) as to the state, quality, description or otherwise of the Services; (ii) as to its suitability for any purpose, merchantable, non-infringing; or (iii) which arise from a course of dealing, trade usage, law or trade custom; or (iv) its performance of any equipment or materials supplied in connection with the provision of the Services; are hereby expressly excluded to the fullest extent permitted by law.
- 9.2 Customer further agrees and acknowledges that it has not relied on any representation made by Airzed, its Personnel or upon any descriptions or illustrations or specifications contained in any document including any catalogue or publicity material supplied by Airzed or its Personnel.
- 9.3 The cessation of the obligation of Customer to pay the Service Charges shall be the sole remedy of Customer on termination of the Agreement for any reason whatsoever pursuant to any of the provisions of the Agreement and Customer hereby irrevocably waives any and all rights and remedies available to it at law or in equity.
- 9.4 Notwithstanding anything to the contrary herein contained, in no event shall Airzed, its Personnel or suppliers be liable to Customer in contract, tort (including negligence whatsoever) or otherwise in respect of any claim brought by a third party or by Customer whatsoever for any loss of revenue or loss of business or loss of data or for interrupted or suspended communications or for any direct, indirect, special, incidental, consequential damages, or for any injury caused or suffered by a person or damage to property or any damages arising out of or in connection with the Services or the Agreement, whether or not Airzed, its Personnel or suppliers was or should have been aware of the possibility that such damage or loss would occur. The aforesaid limitation and exclusion shall apply to the fullest extent permitted by law.
- 9.5 The exclusion or limitation of Clause 9.4 applies to any action giving rise to an obligation, duty or liability even if the action was not authorised or capable of being authorised by Customer.
- 9.6 Should any claim arising out of, or in connection with the Agreement result in Airzed, its Personnel or suppliers becoming liable for any loss or damage which has not been excluded or which is not capable of exclusion under the terms of the Agreement or at law, then the liability of Airzed, its Personnel and suppliers for such loss, damage, cost or expense shall, in aggregate, be limited to the charges paid to Airzed by Customer pursuant to this Agreement over the twenty four (24) months immediately preceding the date of the cause of action arising. This limitation of liability is cumulative and not per incident. Hence, in the event of subsequent claims by Customer against Airzed that are not capable of exclusion under the terms of the Agreement or at law, then the applicable limitation of liability in respect of each of such claims will be the sum total of charges paid to Airzed by Customer pursuant to this Agreement over the twenty four (24) months period immediately preceding the date on which the corresponding cause of action arose less the aggregate of any damages, costs or expenses which Customer may have been adjudged to be liable for in respect of previous claims.
- ### 10. NOTICES
- 10.1 Any legal notices or communications to be given by Airzed to Customer under the Agreement shall be in writing and sent to its last known address or facsimile number. Any notice given by Customer to Airzed shall be in writing and sent to Airzed Broadband Sdn Bhd, 21st Floor, Menara Merais, 1 Jalan P9/3, 46300 Petaling Jaya, Selangor Darul Ehsan or to any other address notified by Airzed from time to time or faxed to Airzed at 03 7620 0366 or to any other fax number notified by Airzed from time to time.
- 10.2 For operational or technical notices or communications to be given by one party to the other, the party may contact the other party by telephone or electronic mail at its last known telephone number or electronic mail address respectively.
- 10.3 Any notice given pursuant to this Clause shall be deemed to have been served if:
 - a. sent by prepaid registered post, on the second business day after the date of posting;
 - b. sent by ordinary post, on the fifth business day after the date of posting;
 - c. hand delivered, upon delivery provided it is delivered during Airzed Working Hours on a business day; or
 - d. sent by facsimile, upon completion of transmission.
- ### 11. GOVERNING LAW AND JURISDICTION
- 11.1 The Agreement and the transactions contemplated by the Agreement shall be governed by and construed in accordance with the laws of Malaysia. Any disputes arising out of or related to the Agreement shall be exclusively subject to the jurisdiction of the courts of Malaysia.
- ### 12. GENERAL
- 12.1 Airzed may from time to time upon giving prior notice to Customer, make any alterations to the Services or vary the terms and conditions of the Agreement. Customer's continued use of the Services after the effective date of such alteration or variation shall constitute irrevocable and unconditional acceptance of such alteration or variation by Customer. If Customer does not accept such alteration or variation, Customer shall be entitled to terminate the Agreement by giving written notice to Airzed prior to the effective date of such alterations or variations.
- 12.2 A provision or a right created under the Agreement may not be waived except in writing signed by the party granting the waiver. No delay or omission by either party to exercise any right or power under the Agreement shall impair such right or power or be construed to be a waiver thereof. A waiver by any party of any of the obligations to be performed by the other party or any breach thereof shall not be construed to be a waiver of any succeeding breach thereto or of any other obligation.
- 12.3 Airzed may assign or novate any of its rights or obligations under the Agreement to any third party by notice to Customer with the written consent of Customer and Customer may assign or novate any of its rights and obligations under the Agreement without Airzed's written consent, which consent will not be unreasonably withheld.
- 12.4 In the event of a conflict or inconsistency between the Registration Form and these terms and conditions and the Addendum, such inconsistency shall be resolved by giving precedence in the following order: the Addendum, these terms and conditions and the Registration Form.
- 12.5 The Agreement constitutes the entire agreement between the parties concerning the subject matter herein and supercedes all previous agreements, understandings, proposals, representations and warranties relating to that subject matter.
- 12.6 Those Clauses which by their nature would survive the termination of the Agreement shall so survive, including without limitation, Clauses 3.3, 3.4, 3.5, 6.2, 6.3, 6.7, 6.8, 7, 9, 11, 12.2, 12.4, 12.6, 12.9, 12.10 and 12.11.
- 12.7 Time is of the essence in the performance of this Agreement and is a significant and material term hereof.
- 12.8 Airzed shall not be liable for failure to perform its obligations under the Agreement caused by an act of God, insurrection or civil disorder, war or military operations, national or local emergencies, act or omissions of government or other competent authorities, industrial disputes of any kind, fire, lightning or explosions, flood, inclement weather, acts or omissions of persons or entities for whom Airzed has no control over, including third party suppliers whom Airzed may use to perform the Services or any part thereof, or any cause whether similar or dissimilar or outside Airzed's reasonable control.
- 12.9 If any term or provision (other than a term or provision relating to any payment obligation) of the Agreement or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable and the remainder of the Agreement shall nevertheless remain in full force and effect, then each term and provision of the Agreement not so affected shall be valid and enforceable to the extent permitted by law.
- 12.10 Customer agrees that the Agreement will be for the benefit of Customer only and does not confer any rights or benefits on any third party, including without limitation Customer's Personnel, and that there are no third party beneficiaries of Customer as to this or any part or specific provision of the Agreement.
- 12.11 Airzed reserves the right at any time, to share any material information in connection with the Agreement to any persons or entities (including without limitation, its agents, contractors, employees, regulators, government or other authorities or services, credit verification, enquiries or directives from any regulatory, governmental or other authorities or in connection with any legal proceedings) and Customer hereby expressly consents to the same.