

## End User Licence Agreement (EULA)

Airtopia is a Solution suite of products and services developed, maintained and supplied by iConnect BMS Pty Ltd ACN: 146 106 998 (**Airtopia**) to enable licensed users to remotely monitor and manage equipment remotely (**Solution**).

This agreement sets out the terms of a contract between you and Airtopia under which you may access and use the Solution provided you are the Licensee or an End User. By accessing or using the Solution, you agree to be bound by this agreement.

This agreement is supplemented by the Order under which a licensee identified in the relevant Order (**Licensee**) has purchased access to the Solution for the Licensee and its End Users. Unless specifically stated otherwise, in the event of an inconsistency between an Order, this agreement and any document incorporated by reference, then those documents will be interpreted in that order of precedence.

The Licensee agrees to ensure that each End User (or any other person it provides access to the Solution) complies with the terms of this agreement and that any breach of this agreement by an End User (or any other person it provides access to the Solution) will be deemed to be a breach by the Licensee under this agreement. If you are an End User you agree, your use of the Solution is subject to this agreement, to comply with the terms of this agreement and that any claims you have in connection with the Solution may only be made by Licensee subject to the terms of this agreement including the limitations of liability.

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Defined Terms

In this agreement unless the contrary intention appears:

- (a) **Business Day** means a day other than a Saturday, a Sunday or a public holiday in Melbourne, Australia;
- (b) **Client Data** means data owned or supplied by an End User or data generated, compiled, arranged or developed on the Solution by an End User. Client Data does not include data generated by Airtopia for the purpose of managing your use of the Solution including without limitation access and usage logs;
- (c) **Confidential Information** means the existence and contents of this agreement and in relation to a party making a disclosure (**Discloser**), all information (including Client Data and any personal information) disclosed, communicated or delivered by the Discloser to the person to whom the disclosure is made (**Recipient**) or learnt or accessed by the Recipient from the Discloser, but excludes any such information which the Recipient can establish:
  - (i) is or becomes generally available in the public domain otherwise than through a breach of confidence owed to the Discloser;
  - (ii) was developed by the Recipient independently of the disclosure, communication or access from the Discloser; or
  - (iii) was disclosed or communicated to or accessed by the Recipient from a third party under no obligation of confidence in relation to that information;
- (d) **Documentation** means the user guide and any other documentation associated with the Solution which Airtopia supplies to you including help files contained in the Solution. Unless specified otherwise, each reference to Solution includes the Documentation;
- (e) **End User** or **you** means the Licensee and each named user authorised under the Order;
- (f) **Force Majeure Event** means an event or cause beyond the reasonable control of Airtopia. It includes each of the following, to the extent it is beyond the reasonable control of that Party: an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, strike, lockout or other labour difficulty, interruptions or unavailability of internet connection or telecommunications

services, act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, the effect of any applicable laws, orders, rules or regulations of any government or other competent authority, embargo, power or water shortage, lack of transportation, breakage or accident or other damage to machinery, interruptions to any third party services on which it relies (including without limitation any internet, telecommunications or hosting services);

- (g) **Insolvency Event** means, for a person, being:
  - (i) in liquidation or provisional liquidation or under administration, having a controller or analogous person appointed to it or any of its property;
  - (ii) being taken to have failed to comply with a statutory demand, be unable to pay its debts or otherwise insolvent;
  - (iii) dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs;
  - (iv) subject to any action that could result in the person becoming an insolvent under administration;
  - (v) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
  - (vi) any analogous event;
- (h) **Intellectual Property Rights** means all present and future rights conferred by statute, common law, equity or any corresponding law anywhere in the world, including (without limitation) in or in relation to any copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, Confidential Information and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include all rights in all applications to register these rights, all renewals and extensions of these rights and all benefits, privileges, rights to sue, recover damages and obtain relief for any past, current or future infringement, misappropriation or violation of any of the foregoing rights;
- (i) **Moral Right** means a right of attribution of authorship, a right not to have authorship falsely attributed, a right of integrity of authorship or a right of a similar nature, conferred by statute or otherwise, and which exists or comes to exist anywhere in the world;
- (j) **Permitted Purpose** means the limited purpose of using the Solution to remotely monitor and control (or any other purpose expressly agreed in the relevant Order).
- (k) **Order** means the Order agreed by the Licensee and Airtopia under which you are granted access to the Solution (and in relation to any Further Term (as defined in clause 2), or any increase to any usage limitations under clause 8, any invoice for that Further Term or increase);
- (l) **Tax** means any and all present and future sales, use, value added, goods and services or other taxes, fees, withholdings, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than Taxes on the Licensor's net income) by any government or regulatory authority in relation to this agreement;
- (m) **Term** means the Initial Term and any Further Term (each as defined in clause 2).

### 1.2 Interpretation

In this agreement, unless stated otherwise, an agreement, representation, covenant or warranty in favour of, or given by, two or more persons is in favour of, or given by, them jointly and severally.

## 2 TERM

The initial term of this agreement is specified in the Order (**Initial Term**). Unless either party gives notice to the other party at least 40 Business Days prior to the end of the Initial Term (or any Further Term) that it does not wish this agreement to continue,

this agreement shall be extended for a further term of 12 months (**Further Term**). The Initial Term or any Further Term will end early if this agreement is terminated in accordance with these terms.

### **3 GRANT OF LICENCE**

Subject to payment of all fees by the Licensee, Airtopia grants Licensee and each End User a revocable, non-exclusive and non-transferable licence to:

- (a) install the Solution in the locations specified in the Order to enable the execution and processing of the Solution; and
  - (b) use the Solution in accordance with this agreement,
- for the Term (the **Licence**) for the Permitted Purpose.

### **4 PROVISION OF SOLUTION**

Airtopia will:

- (a) provide you with access to the Solution for the Term (including the provision of unique usernames and passwords for each End User, or the capability for the Licensee to do so in relation to its End Users);
- (b) ensure that the Solution performs substantially in accordance with the Documentation (including any service levels specified in the Documentation); and
- (c) in the event that the Order specifies that Airtopia will provide a hosted solution, host the Solution within Australia.

Airtopia may subcontract delivery of its obligations under this agreement but remains responsible for any act or omission of any of its subcontractors. Airtopia will provide some third party products together with the Solution. Those third party products are provided as is and are subject to the relevant third party terms, and Airtopia makes no warranties or representations (whether express or implied) in relation to such third party products.

### **5 DOCUMENTATION**

Airtopia will provide you with access to the Documentation during the Term. You must not, without Airtopia's prior written consent, make any alteration to the Documentation or provide any Documentation to a person that is not an End User. You may make such copies of the Documentation as are necessary for your use of the Solution in accordance with this agreement.

### **6 MAINTENANCE AND SUPPORT**

Subject to the Licensee paying any applicable maintenance and support fees and any variation in an Order, Airtopia will provide:

- (a) patches, updates and new releases for the Solution that it makes generally available to licensees of the Solution that are entitled to maintenance; and
- (b) so long as you are an End User, you are entitled to access Airtopia's support services as set out in the Documentation.

If the License Quotation states that Airtopia will provide a hosted solution, unless Airtopia has agreed otherwise with the Licensee, Airtopia will only run one current instance of the Solution. If Airtopia has agreed to host a dedicated instance of the Solution for the Licensee, Airtopia will supply maintenance and support to you in relation to the then current release of the Solution and the previous release of the Solution.

Despite the above, Airtopia is not required to make a new release that is a substantial revision of the Solution or any additional functionality available to End Users and may require the payment of additional fees before doing so.

### **7 DISASTER RECOVERY**

While Airtopia will use reasonable endeavours to develop and implement appropriate disaster recovery processes and procedures (including any specified in the Documentation) where Airtopia has agreed to provide a hosted solution, Airtopia cannot guarantee that it will be able to recover from any disaster or incident within a particular time (or at all) or that it will be able to restore your Client Data. You are responsible for regularly backing up your Client Data and implementing appropriate

disaster recovery processes and procedures to avoid or mitigate the consequences on you as a result of a disaster or business interruption.

### **8 FEES**

Unless specified otherwise in the Order, the Licensee must pay Airtopia the licence fees annually in advance, and any additional fees set out in the Order or this agreement, without deduction, within 7 days of receipt of an invoice.

In the event that the Licensee requests an increase in any licence limits set out in the Order for the balance of the then current Term (or Airtopia detects that any licence limits have been exceeded), Airtopia will issue an invoice to the Licensee for the additional licences required. The licence fees applicable to any additional licences will be set out in the Order or, if the fees are not set out in the Order, Airtopia's then current fees for the licences shall apply.

Unless otherwise agreed the licence fees are fixed for the Initial Term of this agreement and will then be Airtopia's then current licence fee for the Solution for any Further Term. Airtopia agrees to provide the Licensee with notice of the licence fees applicable to any Further Term at least 45 days prior to the expiry of the then current term, if Airtopia fails to do so, the licence fee for the Further Term will be the same as the licence fee for the then current term increased by an amount reasonably determined by Airtopia to reflect any changes in the Consumer Price Index (Weighted Average Eight Capital Cities) during that term.

If the Licensee disputes the whole, or any part of, an invoice, the Licensee will pay the undisputed portion on the due date. If it is subsequently resolved that the remainder is payable, the Licensee will pay that amount together with interest at the rate of 10% per annum calculated from the due date until the payment is made (capitalising monthly).

Without limiting any other rights it may have, Airtopia may suspend any licences granted under this agreement by written notice to Licensee or, to the extent Airtopia is able to, limit access of any End User to the Solution until the Licensee has paid any fees due.

### **9 Tax**

- (a) Except as otherwise expressly stated in the Order, all fees payable under this agreement shall be exclusive of tax.
- (b) Words and phrases defined in the GST Law have the same meaning in this clause. If GST is payable on a Taxable Supply made in connection with this agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive. No payment of any amount pursuant to this agreement is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient. Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

### **10 RESELLERS**

- (a) Airtopia has arrangements with authorised resellers who facilitate the sale and implementation of the Solution (**Resellers**). For the purpose of this agreement, as between an End User and Airtopia, the Licensee is deemed to be a Reseller. Resellers have no capacity to make any representations, give any warranties on behalf of, or otherwise bind or act on behalf of, Airtopia. If a Reseller gives opinions, representations or warranties in respect of the Solution, they do so in their own capacity. Airtopia will only be bound by the Documentation provided by Airtopia in respect of the Solution.

- (b) Airtopia will only be bound to the extent Airtopia has expressly confirmed a representation, warranty or undertaking in an Order. Any Order is a contract between Airtopia and Licensee and unless otherwise agreed by Airtopia in writing a Reseller is not a representative of Airtopia.
- (c) Licensee will only be deemed to have paid any amount to Airtopia under this agreement via a Reseller to the extent the Reseller pays that amount to Airtopia. Licensee acknowledges and agrees that Airtopia may pay Resellers commissions in relation to any Solution.

## 11 YOUR OBLIGATIONS

- (a) You must:
  - (i) only use the Solution for the purpose for which it is intended and the Permitted Purpose, in accordance with the Documentation and any reasonable directions from Airtopia;
  - (ii) not use the Solution for any activity which is illegal, obscene, indecent, offensive or defamatory;
  - (iii) not download, modify, copy, reproduce, republish, store, frame, upload, post, transmit, sell, lease, rent, sublicense or disclose or distribute any part of the Solution (or any content on it) in any way, except as otherwise expressly permitted under this agreement;
  - (iv) not tamper with any copyright notice, trade mark or logo;
  - (v) not re-engineer, create derivative works from, reverse engineer, disassemble, or decompile any part of the Solution;
  - (vi) not tamper with, knowingly hinder the operation of, or make unauthorised modifications to the Solution;
  - (vii) refrain from introducing any virus to or from the Solution;
  - (viii) refrain from changing any administration settings in any part of the Solution;
  - (ix) refrain from damaging or modifying any equipment provided by Airtopia;
  - (x) refrain from using any part of the Solution to send commercial electronic messages in breach of the *Spam Act 2003 (Cth)* (or any equivalent act in any other jurisdiction);
  - (xi) keep all passwords, account names, tokens or log in identifications required to access the Solution secure and confidential;
  - (xii) refrain from uploading into the Solution any material, or use the Solution in any way which infringes the Intellectual Property Rights of any person or is unlawful or violates any law; and
  - (xiii) provide Airtopia with access to your equipment, facilities, Solution, documentation, premises or personnel as Airtopia may reasonably require to enable it to perform its obligations to you and audit your compliance with your obligations to Airtopia.
- (b) You agree to indemnify and hold harmless Airtopia and any entity that controls, is controlled by or is under common control with Airtopia, and each of their officers, employees and subcontractors, from any losses, costs, expenses or claims to the extent that they are caused, or contributed to, by a breach of this agreement by you and, in the case of the Licensee, any End User.

## 12 SECURITY

While Airtopia will use reasonable endeavours to develop and implement appropriate security processes and procedures (including any specified in the Documentation), you acknowledge and agree that the internet and Solution of this nature are inherently vulnerable, and you acknowledge and agree that:

- (a) Airtopia does not guarantee or provide any warranties or representations regarding the security of the Solution and communications to and from the Solution over the internet or a network that other parties have access to;

- (b) that you are responsible for taking reasonable security steps including without limitation keeping your login and password secure, not leaving any terminal with access to the Solution unattended and ensuring that you are using the most up-to-date virus protection and security Solution; and
- (c) you must notify Airtopia immediately if you become aware of any security breach in relation to the Solution.

## 13 INTELLECTUAL PROPERTY RIGHTS

You acknowledge that all Intellectual Property Rights in the Solution are retained by Airtopia. You acknowledge that nothing in this agreement transfers or assigns to you any of Airtopia's Intellectual Property Rights and your right to use and access Airtopia's Intellectual Property Rights are limited to the operation and the use of the Solution in accordance with this agreement. You agree that your use of such Intellectual Property Rights and any goodwill established thereby shall inure to the exclusive benefit of Airtopia.

Without prejudice to your obligations under clause 11, you agree that any development of the Solution (including any developments suggested or contributed to by you) are the property of Airtopia and you assign any present or future Intellectual Property Rights that you might have in relation to those developments to Airtopia and waive any Moral Rights that you may have in relation to those developments (or to the extent those rights cannot be waived, you consent to Airtopia's use of the developments in any manner that may otherwise infringe any Moral Rights you have in relation to those developments).

## 14 INTELLECTUAL PROPERTY INDEMNITY

- (a) Airtopia will:
  - (i) defend or, at its option, settle any demand, claim, action, suit or proceeding brought against Licensee or any End User (the "**Indemnified Parties**") alleging that any part of the Solution (the "**Infringing Items**") infringes a patent, or any copyright, trade secret or other third party Intellectual Property Rights (**IP Claim**); and
  - (ii) pay any damages finally awarded against the Indemnified Party or payable by the Indemnified Party under a settlement approved by Airtopia.
- (b) Airtopia may (at its option) modify or replace any Infringing Items to ensure they are no longer "Infringing Items" (so long as those items have substantially the same functionality) or procure the rights for the Indemnified Parties to use the Infringing Items. If either of those options are not commercially viable for Airtopia, then if requested by Airtopia, the Licensee must cease using and return the Infringing Items to Airtopia and Airtopia will repay any relevant fees referable to the unexpired Term of the Order.
- (c) The indemnity in this clause 14 will not apply:
  - (i) where the Indemnified Parties have failed to provide prompt notice to Airtopia of the IP Claim;
  - (ii) to the extent the Indemnified Party has admitted liability or otherwise compromised Airtopia's ability to defend the IP Claim;
  - (iii) to the extent that the Indemnified Party does not provide Airtopia with control of any defence or settlement negotiations;
  - (iv) to the extent the IP Claim is caused or contributed to by the use of the Solution in breach of this agreement, in a manner not contemplated in the Documentation or in combination with another product or Solution;
  - (v) to any modification of the Solution by a party other than Airtopia; or
  - (vi) if the IP Claim would have been avoided if the Indemnified Party had used a more recent version of the Solution that was not infringing.
- (d) Licensee agrees to provide any reasonable assistance requested by Airtopia in defending an IP Claim.

- (e) This clause 14 sets out the sole remedy of the Indemnified Parties in connection with any IP Claim. The Licensee agrees to ensure that each Indemnified Party complies with this clause 14.

## **15 CLIENT DATA**

Airtopia acknowledges that Client Data remains the property of the Licensee. Airtopia will provide you with the ability to upload, access and download your Client Data, and will manage your Client Data, in substantially the manner set out in the Documentation.

Airtopia is not liable to you for any unauthorised access to your Client Data (other than by any Airtopia personnel) nor for any loss or corruption of your Client Data or the costs of recreating or repairing your Client Data. You should make regular backup copies of your Client Data.

Where Airtopia has agreed to provide a hosted solution, for a period of 30 days after expiry of the Term, you (or an End User on behalf of all End Users of a Licence) will have limited access to the Solution to download your Client Data. After that time Airtopia may permanently delete your Client Data.

Airtopia may charge its standard hourly rates for any assistance you require to extract your Client Data (except where you have terminated this agreement due to a default by Airtopia) or if it is compelled by law to provide copies of your data or evidence regarding your use of the Solution to a third party regarding any proceedings or investigations to which you are a party or subject to.

Unless specifically agreed otherwise, where Airtopia has agreed to provide a hosted solution, your Client Data may be hosted on shared infrastructure and, while it will be logically separated in the manner contemplated by the Documentation, it may not be physically separated from the data of third parties.

## **16 REPRESENTATIONS AND WARRANTIES**

Airtopia represents and warrants that the Solution will perform substantially in accordance with the Documentation. Except as set out above, the Solution is provided as is and you are responsible for ensuring that the Solution is suitable and meets your needs. You are also responsible for appropriately testing the outputs from any use of the Solution.

Except as otherwise expressly provided in this agreement, all other warranties, representations, promises, conditions or statements regarding the Solution and any hosting services (including without limitation the functionality or performance of the Solution), whether express or implied, and whether statutory or otherwise are to the full extent permitted by law expressly excluded.

## **17 LIMITATION OF LIABILITY**

- (a) To the fullest extent permitted by law, Airtopia shall not be liable Airtopia under contract, tort (including negligence) or otherwise, for any indirect, consequential, incidental, punitive or consequential losses, or any loss of revenue, profits, contracts business or anticipated savings; or any loss of data, as a result of or in connection with this agreement, the Solution or any services specified in the Order, even if Airtopia has been advised of the possibility of such losses.
- (b) Airtopia to the fullest extent permitted by law, Airtopia's total aggregate liability to the Licensee and End Users (whether under contract, tort or otherwise) shall not exceed the licence fee paid by the Licensee under this agreement in the 12 months immediately preceding the relevant cause of action.
- (c) The limitations in clauses 17(a) and (b) above will apply to all claims against Airtopia in aggregate by Licensee or any End User and Licensee indemnifies Airtopia in relation to any claim by an End User or any other person related to it in excess of the limitations above.
- (d) Without limiting clauses 17(a) or 17(b), Airtopia's total liability and your sole remedy in relation to any Solution or

services specified in the Order that are in breach of this agreement, will be limited to, at the option of Airtopia, refunding the fees relating to the defective supply, rectifying any defects in the Solution or service or resupplying the defective Solution or service.

## **18 FORCE MAJEURE EVENTS**

Non-performance by Airtopia of its obligations under this agreement will be excused during the time and to the extent that performance is prevented, wholly or in part, by a Force Majeure Event.

## **19 DISPUTE RESOLUTION**

If a dispute arises between Airtopia and the Licensee in relation to this agreement, either party may by notice to the other party, specifying reasonable details of the dispute ("**Dispute Notice**"), refer the dispute for resolution in accordance with this clause. If a Dispute Notice is given under this clause, the Parties must promptly meet and engage in good faith discussions with the bona fide objective of resolving the dispute by agreement. If after a period of 10 Business Days (or such other period as may be agreed) from the date on which a Dispute Notice is delivered to a party, the Parties have not been able to resolve the dispute, either of them may then (but no earlier), by notice, escalate the dispute to a meeting of the senior executives of the Licensee and Airtopia. If after a period of 10 Business Days (or such other period as may be agreed) from the date on which such a meeting of senior executives took place, the Party's delegates have not been able to resolve the dispute, either party may pursue any remedy available at law. Neither Airtopia nor you may commence legal proceedings (other than for urgent interlocutory relief) in relation to any dispute unless the dispute resolution procedures set out in this clause have been followed. Only the Licensee is entitled to manage any dispute or take any action against Airtopia on behalf of any End User in connection with the Solution and this agreement.

## **20 TERMINATION AND EXPIRY**

- (a) Licensee may terminate this agreement by written notice to Airtopia, if Airtopia materially breaches this agreement and fails to rectify that breach within 30 Business Days of receiving a written notice to rectify the breach (or such longer reasonable period having regard to the nature of the breach) or if Airtopia becomes subject to an Insolvency Event.
- (b) Airtopia may terminate this agreement or suspend your access (or the access of any other End User) by written notice to you if:
- you (or the Licensee or another End User) breaches a obligation under this agreement and fails to rectify that breach within 10 days of receiving a written notice from Airtopia;
  - if the Licensee fails to pay any amount due to Airtopia under this agreement or in connection with any services relating to the Solution;
  - you or the Licensee is subject to an Insolvency Event;
  - an End User breaches clauses 11(a)(ii) to 11(a)(v), 11(a)(viii) or 11(a)(xii).
- (c) Where this agreement is terminated for Airtopia's breach, the Licensee may recover a pro-rata proportion of any prepaid fees relating to the unexpired term. In all other cases, Airtopia is entitled to retain any prepaid fees.
- (d) On termination or expiry:
- unless stated otherwise in the Order, the Licensee must pay any outstanding amounts owing to Airtopia including, except in the case of termination by the Licensee for Airtopia's breach, any fees referable to the balance of the then current Term;
  - subject to your right to access Client Data after the Term under clause 15, you must cease using the Solution and destroy or return all copies of the Solution, Documentation or Airtopia's Confidential

- Information on your systems or under your control;  
and
- (iii) if requested by the Licensee, Airtopia will permanently delete your Client Data.
- (e) Any termination of this agreement shall not affect any accrued rights or liabilities of either party, nor shall it affect any provision of this agreement which is expressly or by implication intended to continue in force after such termination, including clauses 11(b), 13, 14, 15, 16, 17, 19, 20, 21, 23, 24 and 25.

## 21 CONFIDENTIALITY

A Party will not, without the prior written approval of the other party, disclose the other party's Confidential Information. A Party will not be in breach of this clause in circumstances where it is legally compelled (but not by contract) to disclose the other party's Confidential Information.

Notwithstanding any other provision of this clause, a party may disclose the terms of this agreement (other than Confidential Information of a technical nature and Client Data) to its employees, related companies, solicitors, auditors, insurers and accountants provided that they give an undertaking to abide by the terms of confidentiality imposed on the parties by this agreement.

Each Party acknowledges that damages alone are unlikely to be an adequate remedy in respect of any breach of that Party's obligations under this clause. Accordingly, in addition to other remedies that may be available, a Discloser may seek urgent interlocutory relief to protect its rights and interest in its Confidential Information against any actual or potential breach of this clause by the Recipient, without proof of actual damages, in addition to any other remedy to which the Discloser would be entitled.

You agree that Airtopia may make reasonable reference to the fact that Airtopia has (or does) provide services to you (including reasonable use of your trade mark) in its marketing materials.

## 22 PRIVACY

Airtopia agrees to treat any personal information in accordance with its privacy policy available at <http://www.airtopia.com/privacy-policy>. Each End User and the Licensee consents (and warrants and undertakes that it has obtained the required consent from each other End-User) to the collection, storage, processing, transfer and use of any personal information of the End-Users by Airtopia in accordance with its privacy policy. Where any Client Data submitted by you includes the personal information of any other person, you are responsible for ensuring that they have provided any consents required to enable Airtopia to collect, use, process, transfer and store that information in accordance with its privacy policy.

## 23 NOTICES

A notice required or permitted to be given by one Party to another under this agreement must be in writing and is treated as being duly given if it is delivered or sent by pre-paid mail to that other party's address as specified in this agreement or notified in writing from time to time. Airtopia's current details are [info@airtopia.com](mailto:info@airtopia.com) or alternatively PO BOX 520 BULLEEN, VIC 3105 Australia. If you are only an End User, any notice to you is effective if given to the Licensee. A notice given to a party in accordance with clause is treated as having been received when delivered (in the case of it being left at that Party's address via hand delivery or courier) and on the third Business Day after posting (in the case of it being sent by pre-paid mail). Without limiting the above Airtopia may give notice to any Licensee or End User by publishing the notice on its website ([www.airtopia.com](http://www.airtopia.com)) and any such notice will be deemed to be delivered to Licensee and any End User 2 Business Days after it is posted or, if earlier, on the relevant Licensee or End User logging into an Airtopia system via the Airtopia website.

## 24 MISCELLANEOUS

- (a) Except as set out below, this agreement may only be varied in writing, signed by each Party to this agreement. Airtopia may amend these terms by providing 30 days prior notice to the Licensee (and where applicable any End User) subject to the following conditions:
  - (i) If the Licensee (or End User) objects to any amendments it must provide notice of its objection to Airtopia at least 15 days prior to the change taking effect setting out the reasons for its objection, alternative terms that it will agree to (if any) and notifying Airtopia that the agreement will terminate on the effective date of the change if the change is not withdrawn (or an alternative is not agreed by the parties).
  - (ii) If the Licensee (or End User) objects in accordance with paragraph (i) and Airtopia does not withdraw the change (or the parties do not agree on an alternative amendment), this agreement will terminate on the expiry of the 30 day notice period in the original notice from Airtopia (**Proposed Amendment Date**).
  - (iii) Otherwise the changes to these terms in the Airtopia notice will take effect on the Proposed Amendment Date.
- (b) A waiver of any right, power or remedy under this agreement must be in writing signed by the Party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- (c) This agreement constitutes the entire agreement between the parties in relation to the matters dealt with. No Party can otherwise rely on an earlier document or anything said or done by or on behalf of another party before this agreement was executed.
- (d) Solely to the extent that any provision (in whole or in part) in this agreement is found by a court of competent jurisdiction to be invalid or unenforceable, such provision (or part of the provision, as applicable) shall be read down or severed, without affecting the validity of the remainder of this agreement or the enforceability of that provision in any other jurisdiction.
- (e) Neither party may assign or transfer any of its rights or obligations under this agreement without the prior consent in writing of the other party (such consent not to be unreasonably withheld or delayed). However, Airtopia may assign its rights and obligations under this agreement to an affiliate or a purchaser of substantially all of its business relating to the Solution, without your prior written consent.
- (f) This agreement is governed by the law in force in the State of Victoria. Each party submits to the non-exclusive jurisdiction of the courts of the State of Victoria and any Courts which may hear appeals from those courts.
- (g) This agreement shall be binding on the executors, administrators, successors, substitutes and permitted assigns of each of the parties.
- (h) Where a term of this agreement has the effect of requiring anything be done on or by a day which is not a Business Day, it must be interpreted as if it required it to be done on or by the next Business Day.
- (i) A provision or any part of a provision in this agreement must not be construed to the disadvantage of a party merely because that Party was responsible for the preparation of this agreement and/or the inclusion of the provision or part of the provision.
- (j) Each Party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transactions contemplated by it.

- (k) Where this agreement contemplates that a party may agree or consent to something (however it is described), that Party may agree or consent, or not agree or consent, in its absolute discretion and agree or consent subject to conditions, unless this agreement expressly contemplates otherwise.

## **25 NO THIRD PARTY RIGHTS**

A person who is not a party to this agreement shall not have any rights under this agreement to enforce any term of this agreement. An End User who is not the Licensee shall not have the right to enforce the terms of this agreement against Airtopia directly. The Licensee shall be jointly and severally responsible and liable for all actions and/or omissions of all End Users as if such actions and/or omissions were committed by the Licensee.