

**General Terms and Conditions for use of Domestic Terminals at
Melbourne Airport which are operated by
Australia Pacific Airports (Melbourne) Pty Ltd**

1 APPLICATION

1.1 Application of Terms and Conditions

These Terms and Conditions apply in respect of any use of the Terminals by an Operator which has not entered into a terminal facility agreement with APAM in respect of the Operator's use of the Terminals. Capitalised terms have the meaning given to those terms in **Schedule A**.

1.2 Acceptance

- (a) If written acceptance of these Terms and Conditions is not provided by the Operator to APAM, either oral acceptance or the commencement of or continuation of the use of the Terminals by the Operator will constitute acceptance by the Operator of these Terms and Conditions.
- (b) Any terms and conditions contained in any other document of the Operator which is not embodied herein are expressly excluded and these Terms and Conditions take precedence.

2 LICENCE TO USE THE TERMINALS

2.1 Grant of Licence

In consideration of payment of the Licence Fee, APAM grants to the Operator and the Operator accepts a non-exclusive licence to use the Terminals in common with Other Operators in accordance with these Terms and Conditions to enable the Operator and the Operator's Employees to carry on the Permitted Use. Any use of the Terminals by the Operator requires the approval of APAM and is subject to capacity. The Operator accepts the Terminals with all existing infrastructure including information technology, computers, plant, equipment, fixtures, fittings and chattels within common use areas and gate lounges "as is where is".

2.2 Terminal Operation and Management

APAM shall have the exclusive right to operate and manage the Terminals, including the exclusive right to:

- (i) manage retail and other concessions;
- (ii) manage signage;
- (iii) manage advertising;
- (iv) appoint and manage cleaning, maintenance, operational and other contractors for the operation and maintenance of the Terminals; and
- (v) gate allocation in accordance with the Gate Allocation Policy;

at the Terminals.

3 USE OF THE TERMINALS

3.1 Use of Terminals

The Operator acknowledges that its use of the Terminals is subject to, and the Operator must, to the extent applicable to an operator in the position of the Operator comply with:

- (a) the Airports Act and the Airports Regulations;
- (b) local flying restrictions including the requirements Civil Aviation Act, the Civil Aviation Regulations, the

Air Navigation Act, the Air Navigation Regulations and Airservices Australia publications including aeronautical information publications, en route supplements and notices to airmen;

- (c) these Terms and Conditions
- (d) all reasonable and lawful conditions, instructions, orders or directions expressly contemplated by these Terms and Conditions and made by APAM pursuant to these Terms and Conditions or by any Relevant Authority;
- (e) any demand management schemes imposed by any Relevant Authority or otherwise in place at the Airport;
- (f) the Security Rules and directives on security of airports and aircraft issued by the agency of the Commonwealth Government with responsibility for the administration of Commonwealth aviation legislation; and
- (g) all relevant State and Commonwealth laws relating to employer and employee conduct including, but not limited to, laws relating to occupational health and safety, sexual harassment, discrimination and equal employment opportunity.

3.2 Conditions of Use

The Operator must at all times comply with:

- (a) the Airside Conditions of Use; and
- (b) the Terminal Conditions of Use.

3.3 CUTE Equipment and CUSS Equipment

- (a) To the extent that the Operator chooses to use CUSS Equipment or the CUTE Equipment in connection with the Terminals, the Operator's use of the Equipment is subject to the terms and conditions notified to the Operator by APAM from time to time.
- (b) If the Operator provides or procures any Operator Software for use in respect of the Equipment, the Operator will be responsible for ensuring that the Operator's use of the Operator's Software is properly licensed at all times.
- (c) Any Operator Software must be approved by APAM prior to installation and testing on the Equipment.
- (d) In using any Operator Software installed in the Equipment, the Operator must comply with any security controls required by APAM from time to time.
- (e) The Operator must ensure that any Operator Software utilised in connection with its use of the Equipment does not do anything which has or could reasonably be expected to have an adverse impact on the security or integrity of APAM, the Airport, its passengers, the Other Operators or any of APAM's or the Other Operator's systems or data (Risk) unless otherwise agreed with APAM. The Operator must give APAM adequate advance notice of any such Risk. If APAM regards any Operator Software as

potentially posing a Risk, it may remove the Operator Software from the Equipment.

3.4 Advertising Signs

The Operator must:

- (a) not display at the Terminals any advertisement, placard or sign other than those the contents, form and location of which have been approved in writing by APAM; and
- (b) immediately at the request in writing of APAM remove any advertisement, placard or sign not authorised by APAM.

4 FEES AND CHARGES

4.1 Operator to pay APAM

The Operator must pay APAM the Licence Fees and all other fees and charges properly calculated and invoiced in accordance with these Terms and Conditions.

4.2 Operator's Information

- (a) No later than midday on the 5th Business Day after the end of each calendar month, the Operator shall provide APAM with a Statement of Information in a format and to a level reasonably required by APAM from time to time showing:
 - (i) the number of arriving Passengers and departing Passengers (including transit and transfer Passengers), broken down to the numbers on every flight carried by the Operator to or from the Terminals during the month
 - (ii) the total number of Passengers processed by the Operator through the use of the CUTE Equipment during the relevant period;
 - (iii) the total number of Passengers processed by the Operator through the use of the CUSS Equipment (itemised to refer to the total number of Passengers processed through the kiosks and the total number of baggage items checked-in through the CUSS Equipment) during the relevant period; and
 - (iv) the total number of Passengers processed by the Operator through traditional check-in desks at the Airport during the relevant period.
- (b) The Operator must, if required by notice in writing by APAM, supply to APAM such information as APAM may reasonably require concerning the Operator's use of the Airport for the purposes of these Terms and Conditions including without limitation the calculation of any fees and charges payable by the Operator for the use of the Terminals. The Operator must provide the information within 7 days after service of the notice or such other time specified in the notice. If the period of time is less than 7 days it must be a reasonable time in the circumstances.
- (c) If the Operator becomes aware of any errors in the Statement of Information the Operator must inform APAM of the error and provide in writing the correct information and an explanation for the error.
- (d) APAM is permitted to use information received under this clause 4.2 solely for the purposes of calculation of fees and charges and for Airport planning purposes.

- (e) If the Operator fails to provide a Statement of Information in accordance with this clause 4.2 or if APAM considers a Statement of Information provided by the Operator to be inaccurate, the Licence Fee shall be calculated as determined by APAM, acting reasonably, taking into account prior months and passenger numbers until the Operator provides a correct Statement of Information, and the Operator shall be liable to pay the amount so calculated by APAM.
- (f) Should the Operator not have the necessary systems in place to disaggregate their data in order to provide the above information, APAM may utilise its own systems to obtain the information, which will be used for billing purposes.
- (g) The Operator will keep proper source records of the information provided under this clause 4.2 for a period of five years or longer as may be required by law.
- (h) APAM is permitted to use the Operator's Information for the purposes of operating the Airport including but not limited to:
 - (i) any lawful purpose necessary for compliance with the Airports Act, the Airports Regulations, the Security Rules or any other law;
 - (ii) any lawful purpose necessary for the good planning, development or operation of the Airport;
 - (iii) combining the information in an aggregated form, for reporting and discussing activity and performance of the Airport and APAM but in any event not to disclose the Operator's Information to a third party; and
 - (iv) calculation of fees and charges payable by the Operator for the use of the Terminals.

4.3 Invoicing and Payment of Licence Fees

- (a) APAM will provide the Operator with an invoice each calendar month (not later than the 15th Business Day of the calendar month) detailing the applicable Licence Fees for that month.
- (b) The statement payment due date will be the 30th day or the last Business Day, whichever is the earlier, of the month after the month to which the invoice applies.
- (c) Accounts must be paid by electronic funds transfer or cheque accompanying a remittance advice or as otherwise agreed by APAM and the Operator.
- (d) APAM is under no obligation to change invoices or payments if it has correctly processed the Operator's Information but APAM may, at its sole discretion, alter an invoice or payment if the Operator's Information is corrected or is otherwise in error.

4.4 Interest on Arrears of Payments

- (a) If any amount due and payable to APAM is not paid within 30 days after the date on which the amount becomes due and payable under these Terms and Conditions, the Operator shall pay APAM interest calculated on a daily basis from the date on which the amount became due and payable until the date of payment (both dates inclusive) at Westpac Banking Corporation's overdraft indicator lending

rate of interest per annum at the date of payment plus 1%. Interest must be paid by the Operator at the same time as it pays the amount to which the payment relates.

- (b) Without limiting clause 4.4(a), APAM reserves the right to demand, and the Operator shall pay if demanded the following late payment administration fees in respect of any amount which becomes due and payable under these Terms and Conditions:
 - (i) any amount not paid by 60 days after the due date - \$450; or
 - (ii) any amount not paid by 90 days after the due date - \$650.

The Operator acknowledges that the late payment administration fees payable under this clause 4.4(b) comprise a genuine pre-estimate of the loss which would be suffered by APAM arising from or in connection with the relevant breach of this provision.

4.5 No Set-Off

The Operator shall not make any set-off against or deduction from any amount payable by the Operator to APAM under these Terms and Conditions without the consent in writing of APAM.

5 GENERAL TERMS AND CONDITIONS

5.1 Occupational Health and Safety

During the Term, the Operator must:

- (a) provide APAM with written evidence of the Operator's occupational health and safety policy and airport emergency plan at the start of each financial year and as otherwise requested by APAM;
- (b) comply, permit APAM to itself comply and ensure that all the Operator's Employees comply with all Laws relating to occupational health and safety which are applicable to the Operator or the Operator's use of the Terminals;
- (c) comply, permit APAM to itself comply and ensure that all the Operator's Employees comply with any policies and procedures issued by APAM or directions given by APAM relating to occupational health and safety which are applicable to the Operator or the Operator's use of the Terminals;
- (d) given written notice to APAM on each occasion when the Operator becomes aware when a breach of a law relating to occupational health and safety in respect of the Operator or the Operator's use of the Terminals;
- (e) notify APAM immediately if the Operator becomes aware of an event, occurrence, accident, incident or injury which obliges APAM or the Operator to notify the Victorian WorkCover Authority or any other Relevant Authority;
- (f) provide to APAM copies of any notices or directions issued by the Victorian WorkCover Authority or other Relevant Authority in respect of the Operator's use of the Terminals;
- (g) give all reasonable assistance to APAM to enable APAM to monitor the identification, assessment and

management by the Operator of risks relating to the Operator or the Operator's use of the Terminals;

- (h) at its expense and as requested by APAM, implement systems to identify, assess and eliminate or control risks in respect of the Operator's activities, and the Operator's use of the Terminals;
- (i) keep all occupational health and safety data confidential subject to clause 8.10 and obtain the written consent of APAM prior to releasing any data (relating to occupational health and safety), about the Terminals or any part of the Airport except where required by Law;
- (j) indemnify APAM in respect of all loss and damage suffered by APAM which arises because the Operator has breached this clause 5.1 or any other provision of these Terms and Conditions which relates to occupational health and safety; and
- (k) provide APAM with all reasonable access and any required occupational health and safety data as may be required to ensure that APAM has the necessary access and data to meet its obligation to comply with all Laws, policies and procedures or any directions issued in relation to occupational health and safety so far as they relate to the Terminals or the Operator's use of the Terminals.

5.2 Compliance with Directions

The Operator must comply with all lawful directions given from time to time by APAM in relation to:

- (a) the storage of fuel, oil or other materials of an explosive or flammable nature in or about the Terminals; and
- (b) the provision and installation of suppressors in motor vehicles or other plant and equipment from time to time in or about the Terminals to prevent interference with radio or television transmission or reception or with any computer, radar, communication or other electronic equipment.

5.3 Exclusion of Liability

APAM and APAM's Employees, and the Operator and the Operator's Employees are not liable for loss of or damage to any property owned or controlled by the Operator or any consequential loss, unless or except to the extent that the loss or damage arises or results directly from any act, omission, negligence or default on their part.

5.4 Indemnity

The Operator shall indemnify and keep indemnified APAM and APAM's Employees from and against all claims, actions, liabilities and losses arising from, and any costs, charges and expenses incurred in connection with:

- (a) loss of or damage to any property; or
 - (b) injury, disease or death to any person
- caused by or to the extent contributed to by:
- (c) an act, omission, negligence or default of the Operator or the Operator's Employees or its invitees;
 - (d) some danger created by the Operator or the Operator's Employees or its invitees (whether or not the existence of that danger was or ought to have been known to it);

- (e) the operation of any equipment, machinery or thing by any person by or on behalf of the other party; or
- (f) any other act or thing by or on behalf of the other party which may arise from or in relation to its use or operation of the Terminals.

5.5 Insurance

The Operator shall:

- (i) take out a public liability insurance policy in respect of the Permitted Use carried on at the Terminals in the name of the Operator that protects APAM, the Commonwealth and the Operator, and the Operator shall ensure that APAM, the Commonwealth and the Operator's interests in this insurance is evidenced in writing by the insurer, to a minimum liability and for an excess the Operator carries in the normal course of its business for any single event provided the minimum liability is no less than \$50 million;
- (ii) take out an insurance policy in the name of the Operator, that protects APAM, the Commonwealth and the Operator against damage to the Operator's property and shall ensure that APAM, the Commonwealth and the Operator's interests in this insurance is evidenced in writing by the insurer, to a minimum liability and for an excess the Operator carries in the normal course of its business for any single event;
- (iii) take out each of the insurances described in clauses 5.5(i) and (ii) with a reputable company and provide on demand evidence to APAM of the currency and contents of the insurance policy or policies;
- (iv) pay punctually all premiums for the insurance effected pursuant to these Terms and Conditions and make available for inspection the policies and reasonable evidence of currency of the policies. In the event of any claim made under the policies the Operator shall apply the insurance moneys to the purpose for which the claim was made; and
- (v) not do anything or omit to do anything whereby any insurance effected pursuant to these Terms and Conditions may become vitiated or non-effective.

5.6 Disposal of Waste

The Operator must comply with all of APAM's directions as to the disposal of waste including, without limitation, directions in respect of quarantine requirements. For the avoidance of doubt, the Operator must not dispose of waste in the bins provided in the Airport for public use.

5.7 Standard of Cleanliness

The Operator must at all times, subject always to APAM's obligations assumed in this regard, keep those parts of the Terminals and other areas which it uses in a clean and serviceable condition during and at the end of the period of the Operator's usage having regard to its location at the Airport and the nature of the Permitted Use.

5.8 Approval by APAM

Save and except for the Operator's right to carry out work on its own equipment, facilities or installations at the Terminals, the Operator must not remove, replace exchange or alter any part of the plant equipment, fixtures, fittings, chattels, facilities or installations at the Airport unless it has first received the consent in writing of APAM. APAM, in its absolute discretion, may refuse or permit the

work or may permit the work subject to such conditions as are reasonably appropriate.

5.9 No Guarantee of Trade

The Operator acknowledges that:

- (a) APAM has not made any representation, expressed or implied, to the Operator as to the volume of trade which might be anticipated by the Operator in the conduct of the Permitted Use at the Terminals; and
- (b) APAM will not be liable to the Operator for any loss of profit or diminution in the Operator's business carried on at or from the Terminals resulting from any maintenance, relocation, extension or redesign of the Terminals or from any interruption to flight or Passenger movements.

5.10 Requirements of Authorities

The Operator shall at its own cost comply with all requirements of the Airports Act and the Airports Regulations and all statutes, ordinances, proclamations, by-laws orders or regulations present or future affecting or relating to its activities and operations at the Terminals, and with all lawful requirements which may be made, or notice or orders which may be given to the Operator in respect of the same, by any Relevant Authority. If the Operator fails, neglects or refuses to comply with the Airports Act, the Airports Regulations or any other statute ordinance proclamation by-law order regulation requirement or notice, it shall be lawful for but not obligatory for APAM, where practical, to comply with the same and all monies thereby incurred are payable as damages to APAM on demand.

5.11 Environmental Monitoring

The Operator must:

- (a) comply with the Airports (Environment Protection) Regulations and all other relevant Environmental Laws and other environmental controls in carrying on the Permitted Use;
- (b) comply with any reasonable direction or request by APAM relating to the environmental performance by the Operator arising from the Operator's use of the Terminals;
- (c) monitor the environmental impacts of its own activities at the Terminals and report on them to APAM in a reasonable manner in accordance with all relevant environmental controls in carrying on the Permitted Use, including the Airports Act, the Airports (Environment Protection) Regulations and any environmental strategy published by APAM or any Relevant Authority for the Terminals;
- (d) permit APAM and its employees, agents and contractors at any reasonable time to inspect the Operator's premises, facilities and operations at the Terminals and monitor its environmental performance and to rectify any environmental harm;
- (e) immediately after the Operator becomes aware of the same:
 - (i) notify APAM of any contamination or environmental hazard or breach of any environmental law or requirement arising in connection with the Permitted Use; and
 - (ii) if the matter is occasioned by the Operator or the Operator's Employee or by carrying out the

Permitted Use, the Operator must remedy the contamination, hazard, breach or requirement to the reasonable satisfaction of APAM at the Operator's cost; and

- (f) do whatever APAM reasonably requires of the Operator in order to assist APAM to comply with its obligations under the CBD Scheme and NGRS, including:
 - (i) permitting access to the Operator's premises, facilities and operations at the Terminals by APAM or persons authorised by APAM at reasonable times on reasonable notice for the purpose of collecting data and to check or monitor the performance of the base building of the Terminals; and
 - (ii) providing any information relating to the Terminals or the Operator's use of or operations from the Terminals that is required by APAM in order to comply with its obligations under the CBD Scheme and NGRS;
- (g) keep all environmental data confidential subject to clause 8.10 relating to environmental data or otherwise in relation to any part of the Terminals except where required by Law to disclose.

5.12 Security Rules

- (a) The Operator must comply with the requirements of the Security Rules and a breach or failure by the Operator to do so gives APAM, in addition to its other rights and powers, the right to require the Operator to rectify the non-compliance within a reasonable time (as determined by APAM acting reasonably). Failure by the Operator to comply shall entitle APAM to do such things at the Operator's cost as may enable the Security Rules to be satisfied.
- (b) Any exercise of APAM's powers under the Security Rules will not constitute a breach of these Terms and Conditions and the Operator shall not make any claim in respect of APAM's exercise of these rights.
- (c) If the Operator does not comply with any safety or security requirements, APAM may give a notice in writing to the Operator to comply immediately with the relevant safety or security requirements. APAM may stop the Operator from using the Terminals at the Airport if the Operator does not comply with the notice.

5.13 No rights created by these Terms and Conditions

APAM and the Operator acknowledge that no rights of ownership or tenancy are created by these Terms and Conditions in favour of the Operator over any part of the Terminals.

5.14 APAM's Official Capacity

The Operator acknowledges and accepts that APAM is charged with the responsibility of administering and enforcing certain provisions of the Airports Act and the Airports Regulations and that any lawful conduct of APAM in its regulatory capacity is deemed not to be a breach of any of these Terms and Conditions. The Operator must comply (to the extent related to it or its use of the Terminals) with all requirements imposed by APAM in the reasonable and lawful exercise of its powers under the Airports Act and the Airports Regulations. The Operator

must not do or suffer to be done any act or neglect or omit to do any act or permit any other person to neglect or omit to do any act where the conduct, neglect or omission may obstruct APAM from performing its responsibilities and the Operator shall indemnify and keep APAM indemnified against any costs, claims or expenses suffered by APAM as a result of such conduct, neglect or omission by the Operator.

6 TERMINATION

6.1 Other Rights

Nothing in this clause 6 derogates from any right of either party under the general law to exercise any right including termination of these Terms and Conditions by reason of a default or repudiation by the other party.

6.2 Termination by APAM

APAM may terminate the licence granted under these Terms and Conditions upon notice in writing to the Operator if:

- (a) after the Operator has failed to pay to APAM within 21 days of the due date shown on any invoice issued by APAM in accordance with clause 4.3, 14 days has elapsed after APAM has informed the Operator in writing of APAM's intention to terminate the licence granted under these Terms and Conditions in the event the invoice remains unpaid at the expiration of the 14 day period;
- (b) the Operator materially omits or materially fails to observe or perform any term, condition or obligation set out in these Terms and Conditions and fails to remedy the omission or failure or to observe or perform the term, condition or obligation within 14 days, or such longer period as may be reasonable in the circumstances but not more than 30 days, after APAM has given the Operator a notice in writing requiring the Operator to remedy the omission or failure to observe or perform the term, condition or obligation; or
- (c) a change occurs in the business assets or financial condition of the Operator or of the Operator and its related bodies corporate taken as a whole, which in the reasonable opinion of APAM may have a material adverse effect on the ability of the Operator to perform or observe its obligations under these Terms and Conditions (including but not limited to an Insolvency Event in connection with the Operator or one of its related bodies corporate),

and APAM may re-enter and prevent the Operator's use of the Terminals or any part thereof and these Terms and Conditions shall thereupon determine but without prejudice to any claim, right of action or remedy which APAM may have against the Operator or the Operator may have against APAM in respect of any prior breach of these Terms and Conditions.

6.3 Consequences of Termination

If the licence granted under these Terms and Conditions is terminated in accordance with this clause 6 or any other provision of these Terms and Conditions:

- (a) the Operator acknowledges that it no longer has the right to use the Terminals except in the case of emergency;
- (b) if APAM allows the Operator to use the Terminals (such as in the case of emergency), the Operator

must pay on demand all charges reasonably determined by APAM at the time or as specified from time to time on APAM's website for Terminals access; and

- (c) APAM may require the Operator to remove its property from the Terminals promptly upon the termination of the licence granted under these Terms and Conditions. Any of the Operator's property not removed from the Terminals within 7 days after the termination of the licence granted under these Terms and Conditions shall at APAM's election, by notice in writing to the Operator, become the absolute property of APAM. The Operator must forthwith make good any damage done to any property of APAM or another person as a result of the Operator or APAM removing the Operator's property from the Terminals and pay any costs of disposal of the Operator's property by APAM, less any proceeds of disposal realised by APAM. If the proceeds of disposal realised by APAM exceed the costs of disposal, then APAM will pay the difference to the Operator..

7 GOODS AND SERVICES TAX

7.1 Definitions

In this clause:

- (a) expressions which are not defined, but which have a defined meaning in the GST Law, have the same meaning; and
- (b) "GST Law" has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999.

7.2 Consideration is Exclusive of GST

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this document are exclusive of GST. The recipient's obligation to pay the GST component of the consideration is subject to it receiving a valid tax invoice in respect of the supply at or before the time of payment.

7.3 Reimbursement

If this document requires a party to pay for, reimburse or contribute to any expense, loss or outgoing ("**reimbursable expense**") suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense plus any GST payable by the other party.

7.4 Adjustment Events

If at any time an adjustment event arises in respect of any supply made by a party under this document, a corresponding adjustment must be made between the parties in respect of any amount paid to that party by the other party pursuant to clause 7.2 and payments to give effect to the adjustment must be made and the supplier must issue an adjustment note.

8 MISCELLANEOUS

8.1 Notices

In addition to any means authorised by law, any communication may be given by:

- (a) being personally served on a party;

- (b) being left at the party's current address for service;
- (c) being sent to the party's current address for service by pre-paid ordinary mail or if the address is outside Australia, by pre-paid airmail; or
- (d) being sent by electronic email to the party's current email for service,

to the address details notified by the parties to each other.

8.2 Stamp duty

The Operator shall, as between the parties, be liable for and duly pay all stamp duty (including any fine or penalty except where it arises from default by the other party) on or relating to these Terms and Conditions and any document executed under it.

8.3 Assignment of Rights Without Consent Prohibited

The Operator must not without the prior written consent of APAM assign any right, authority, privilege, benefit or obligation arising or which may arise pursuant to these Terms and Conditions.

8.4 Amendment

- (a) This document may be updated from time to time by publication by APAM on its website and written notice to the Operator by APAM not less than 30 days prior to the amendments taking effect.
- (b) APAM will use reasonable endeavours to consult the Operator at least 90 days before the change, replacement or waiver of any of these terms and conditions and consider and respond to the Operator in writing in relation to any comments or objections raised to the change replacement or waiver.
- (c) Clause 1.2(a) shall apply in respect of the Terms and Conditions so amended at the time the amendments take effect.

8.5 Waiver and Exercise of Rights

- (a) A single or partial exercise or waiver of a right relating to this document will not prevent any other exercise of that right or the exercise of any other right.
- (b) A party will not be liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

8.6 Rights Cumulative

Subject to any express provision in this document to the contrary, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

8.7 Further Assurance

Each party shall promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this document and any transaction contemplated by it.

8.8 Governing Law and Jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws in force in Victoria.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives

any right to object to any proceedings being brought in those courts.

8.9 Entire Understanding

- (a) This document embodies the entire understanding and agreement between the parties as to the conduct of the Permitted Use and in relation to the subject matter of these Terms and Conditions.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this document are merged in and superseded by this document and shall be of no force or effect whatever and no party shall be liable to any other party in respect of those matters.

8.10 Confidentiality and Publicity

The Operator must not, at any time, without the consent of APAM, use or disclose or allow its employees, consultants or agents to use or disclose to any third party any of the following:

- (i) any information which may come to the knowledge of the Operator concerning the operations, dealings, transactions, agreements or commercial or financial arrangements or affairs of APAM;
- (ii) any documentation of a confidential nature belonging to APAM; and
- (iii) any intellectual property of a confidential nature belonging to APAM,

unless required by law or the rules of a recognised stock exchange.

8.11 Disputes

- (a) If there is a dispute about whether either party has complied with an obligation or have a right under these conditions, then:

- (i) the disputing party must serve on the other party a notice detailing the alleged breach and remedy sought (**Notice of Dispute**).
- (ii) within 14 days of the Notice of Dispute, the parties must meet to negotiate in good faith with a view to resolving the dispute; and
- (iii) if the dispute is not resolved within the following 14 days the parties must try to resolve the dispute by mediation.
- (b) If the dispute is not resolved under clause 8.11(a) then either party may, after giving 7 days' notice to the other, ask the President of the Law Society of Victoria to appoint a mediator to mediate the dispute.
- (c) The mediation:
 - (i) is to be conducted in accordance with the mediation rules of the Law Society of Victoria; and
 - (ii) is to take place in Melbourne, Victoria.
- (d) The parties are to equally share the cost of the mediation.
- (e) The parties may not within 60 days of the service of the Notice of Dispute seek any other means of resolving the dispute (other than seeking an urgent, interlocutory or interim injunction) unless the mediation has taken place.
- (f) Where APAM is of the view, acting reasonably, that a dispute is not a genuine dispute, APAM reserves the right to take any other action against the Operator that the law allows while in dispute or mediation.

SCHEDULE A - DEFINITIONS

In this document:

"Air Navigation Act" means the *Air Navigation Act 1920* (Cth).

"Air Navigation Regulations" means the regulations made pursuant to the Air Navigation Act.

"Airport" means Melbourne Airport.

"Airports Regulations" means regulations made pursuant to the Airports Act.

"Airports (Building Control) Regulations" means the Airports (Building Control) Regulations made pursuant to the Airports Act.

"Airports (Environmental Protection) Regulations" means the Airports (Environmental Protection) Regulations made pursuant to the Airports Act.

"Airports Act" means the Airports Act 1996 (Cth).

"Airside Conditions of Use" means the applicable Airside Conditions of Use as amended and published by APAM from time to time.

"APAM" means Australia Pacific Airports (Melbourne) Pty Ltd ABN 62 076 999 144 and includes its successors and assigns as the lessee and operator for the time being of the Airport.

"APAM's Employees" includes APAM's employees, agents, contractors and sub-contractors and their respective agents and employees.

"Business Day" means a day, which is not a Saturday, Sunday or public or bank holiday, in Melbourne.

"CBD Scheme" means the Commercial Building Disclosure Scheme established under the *Building Energy Efficiency Disclosure Act 2010* (Cth).

"Civil Aviation Act" means the *Civil Aviation Act 1988* (Cth).

"Civil Aviation Regulations" means regulations made pursuant to the Civil Aviation Act.

"Commonwealth" means the Commonwealth of Australia.

"CUSS Equipment" means the Common User Self Service equipment at the Terminals.

"CUTE Equipment" means the Common User Terminal Equipment at the Terminals.

"Environmental Laws" means:

- (a) all laws relating to town planning, the environment, noise, development, construction of structures, health, contamination, radiation, pollution, waste disposal, land management and Hazardous Material (including the Airports Act and Airports Regulations);
- (b) all conditions of all approvals issued under any law in paragraph (a);
- (c) any environmental strategy or policy prepared by APAM or any Relevant Authority for the Airport; and
- (d) regulations and any order, guideline, notice, direction or requirement of any Relevant Authority in relation to these matters.

"Equipment" means the CUSS Equipment and the CUTE Equipment.

"Gate Allocation Policy" means APAM's policy regarding gate allocation as determined by APAM from time to time.

"Hazardous Material" means any substance, gas, liquid, chemical, mineral or other physical or biological matter:

- (a) that is or may become toxic, flammable, inflammable;
- (b) that is otherwise dangerous, harmful to the environment or any life form or which may cause pollution, contamination or any hazard or increase in toxicity in the environment or may leak or discharge or otherwise cause damage to any person, property or the environment; or
- (c) that is a material or compound controlled, prohibited or regulated from time to time by any Environmental Law.

"Insolvency Event" means, in respect of a party, the occurrence of any of the following:

- (a) that party disposes of the whole or substantial part of its assets, operations or business other than in the ordinary course of business;
- (b) that party ceases to be able to pay its debts as they become due, which shall be deemed to have occurred if that party notifies the other party in writing or creditors generally that the notifying party is insolvent;
- (c) a mortgagee takes possession or disposes of the whole or substantial part of that party's assets, operations or business;
- (d) a party entering into a scheme of arrangement or composition with its creditors (other than for the purposes of a solvent reconstruction);
- (e) a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person is appointed over the whole or a substantial part of that party's assets, operations or business.

"Licence Fee" means the fees, charges and costs for users of the Terminals who are not party to a terminal facility agreement with APAM as published by APAM on its website and amended from time to time.

"NGERS" means the National Greenhouse and Energy Reporting Scheme established under the *National Greenhouse and Energy Reporting Act 2007* (Cth).

"Operator" means any airline which uses the Terminals at the Airport under these Terms and Conditions.

"Operator's Aircraft" means aircraft owned, leased, hired, chartered or otherwise used by the Operator to carry on the Permitted Use.

"Operator's Employees" includes the Operator's employees, agents, contractors and sub-contractors and their respective agents and employees.

"Operator Software" means any of the Operator's proprietary or licensed computer programs which are necessary to enable the Operator to use the Equipment including, for the avoidance of doubt, any "white label solution".

"Other Operator" means any person other than the Operator who also uses the Terminals for the Permitted Use or any similar use.

"Passenger" means a person travelling domestically on the Operator's Aircraft, but not including:

- (a) infants of less than 2 years of age;
- (b) aircrew operating the Operator's Aircraft; and
- (c) aircrew travelling for the purpose of repositioning an Operator's Aircraft

who is processed through the Terminals.

"Permitted Use" means the use of the Terminals in common with others for the purpose of processing arriving or departing Passengers whose flight with the Operator commences and terminates within Australia. The permitted use does not include retail activities other than the sale of tickets for the Operator's Aircraft, charging for excess baggage, arranging flight changes, selling passenger protection insurance, provision of in-flight services, other like retail activities incidental to or coincident with the proper and lawful use of the Terminals by the Operator as a passenger airline operator and other retail activities approved in writing by APAM in its discretion, acting reasonably.

"Relevant Authority" means APAM (to the extent only that it is exercising statutory or regulatory powers or responsibilities) and any government, municipal, statutory, public or other authority or body having authority or jurisdiction in relation to the Airport or the Operator.

"Security Rules" means those requirements established for the time being by APAM, acting reasonably, as being essential to the security and safety of the Airport, including, without limitation, in relation to:

- (a) emergency procedures;
- (b) staff security clearances;
- (c) security screening (personnel and goods);
- (d) aviation security identification cards; and
- (e) fees reasonably set by APAM from time to time to recover security costs on a pass through basis including a reasonable allocation of overheads.

"Statement of Information" means a statement of information provided by the Operator to APAM in accordance with clause 4.2.

"Terminals" means the domestic terminals operated by APAM and used by the Operator at the Airport and includes those parts of the building, walkways, passenger processing areas, (including check-in counters and queuing areas and baggage handling facilities and collection areas), aerobridges, plant, equipment, fixtures, fittings, chattels, aprons and other facilities owned by APAM used by the Operator.

"Terminal Conditions of Use" means the applicable Terminal Conditions of Use as amended and published by APAM from time to time.