

**Standard Terms and Conditions for use of Aeronautical and International Passenger Terminal Facilities
at Melbourne Airport which is 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 Facilities by an Operator which has not entered into an aeronautical services agreement with APAM in respect of the Operator's use of the Facilities. 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 Facilities 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 FACILITIES

2.1 Grant of Licence

- (a) In consideration of payment of the Licence Fee, APAM grants to the Operator and the Operator accepts a non-exclusive licence to use the Facilities in common with Other Operators in accordance with these Terms and Conditions to enable the Operator to carry on the Permitted Use, and includes the right in common with Other Operators to access the Facilities at such times as are designated for the time being by APAM, acting reasonably.
- (b) The Operator accepts the Facilities 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".
- (c) The Operator acknowledges and agrees that no rights of ownership or tenancy are created by these Terms and Conditions in favour of the Operator over any part of the Airport, including take off slots and parking areas.
- (d) The Operator must not cause any caveat to be lodged against any part of the titles to the Airport claiming any alleged interest arising from these Terms and Conditions.

2.2 Operation and Management of the Facilities

APAM shall have the exclusive right to operate and manage the Facilities, 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 Facilities; and
- (v) allocate facilities.

3 USE OF THE FACILITIES

3.1 Use of the Facilities

The Operator acknowledges that its use of the Facilities 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 of the 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) the Airport Conditions of Use;
- (e) 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;
- (f) any runway demand management scheme or other demand management schemes or capacity allocation rules introduced by APAM or imposed by any Relevant Authority;
- (g) the Security Rules and directives on security of airports and aircraft issued by the Department; and
- (h) all relevant State and Commonwealth laws relating to employer and employee conduct.

3.2 Occupational Health and Safety

Without limiting clause 3.1, the Operator must and must ensure that the Operator's Associates at all times:

- (a) comply with:
 - (i) all Occupational Health and Safety Laws which are applicable to the Permitted Use;
 - (ii) any Airport safety policies in place from time to time and which have been

communicated in writing to the Operator;
and

(iii) all:

(A) occupational health and safety audits or inspections undertaken or required by APAM or any Relevant Authority; and

(B) lawful directions and notices of APAM and any Relevant Authority in relation to occupational health and safety,

relating to the Permitted Use;

- (b) 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;
- (c) comply, permit APAM to itself comply and ensure that all the Operator's Associates comply with all Laws relating to occupational health and safety which are applicable to the Operator or the Operator's use of the Facilities;
- (d) 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;
- (e) 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 Facilities;
- (f) 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 Facilities;
- (g) 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 Facilities;
- (h) keep all occupational health and safety data confidential subject to clause 8.11 and obtain the written consent of APAM prior to releasing any data (relating to occupational health and safety), about the Facilities or any part of the Airport except where required by Law;
- (i) indemnify APAM in respect of any loss and damage suffered by APAM which arises because the Operator has breached this clause 3.2 or any other provision of these Terms and Conditions which relates to occupational health and safety; and

- (j) 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 Facilities or the Operator's use of the Facilities.

3.3 Compliance and responsibility for Associates

The Operator for itself and to the extent applicable, for the Operator's Associates, agrees to be bound by and to comply with clause 3.1 immediately upon the Operator engaging in the use of the Facilities. The Operator will at all times be responsible for the acts and omissions of the Operator's Associates.

3.4 CUTE Equipment and CUSS Equipment

- (a) If the Operator wishes to use CUSS Equipment, it must apply to APAM no less than 3 months prior to the date on which it intends to use CUSS Equipment. Use of CUSS Equipment by the Operator is subject to availability.
- (b) The Operator will be responsible, at its own expense, for procuring, providing, installing, maintaining and supporting any Operator Software required for use of CUSS Equipment.
- (c) The Operator acknowledges and agrees that the third party provider of the CUTE will be responsible for resolving any incidents relating to the Operator's use of the CUTE and replacing any key components of the CUTE.

3.5 Advertising Signs

- (a) These Terms and Conditions do not confer any rights on the Operator to display any advertisement, placard, sign or branding at the Airport or on any Facilities, other than:
 - (i) non-permanent signage identifying the Operator on any check-in counter, service desks, CUSS kiosk, ABDs or boarding gate assigned to the Operator in accordance with the Airport Conditions of Use;
 - (ii) any advertisement, placard, sign or branding the contents, form and location of which APAM has approved in writing; or
 - (iii) any advertisement, placard, sign or branding permitted by an Other Agreement.
- (b) The Operator shall upon reasonable notice immediately remove or obliterate any advertisement, placard, sign or branding which contravenes clause 3.5(a) when so directed by APAM.

4 FEES AND CHARGES

4.1 Operator to pay APAM

The Operator is liable for and must pay APAM the Licence Fees and all other fees and charges incurred by the Operator and invoiced by APAM 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 electronic form and to a level of detail determined by APAM acting reasonably from time to time showing 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 Airport during the month.
- (b) If the Operator fails to provide APAM with a properly completed Statement of Information in accordance with the time frame specified in clause 4.2(a), APAM reserves the right to demand, and the Operator shall forthwith pay if demanded, an administration fee of \$330 to APAM. The Operator acknowledges that the administration fee payable under this clause 4.2(b) comprises a genuine pre estimate of the loss which would be suffered by APAM arising from or in connection with the relevant breach of these Terms and Conditions.
- (c) The Operator must provide APAM at its request details of the MTOW in respect of the Operator's Aircraft. The Operator must use best endeavours to inform APAM of any changes in MTOW or any additional Operator's Aircraft using the Facilities as and when this occurs.
- (d) 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 Facilities for the purposes of these Terms and Conditions. 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.
- (e) If the Operator becomes aware of any errors in the Operator's Information, the Operator must inform APAM of the error and provide in writing the correct information and an explanation for the error.
- (f) Without limiting clause 4.5, APAM is permitted to use information received under this **clause 4.2** for the purposes of calculation of fees and charges and for Airport planning purposes.

4.3 Third party data collection

- (a) APAM may at any time after the date of these Terms and Conditions introduce direct system to system interfacing or data transfer, to be operated by a third party provider, after the date of these Terms and Conditions to enable the Operator's Information to be provided to APAM more efficiently (**Third Party Data Collection System**).
- (b) The Operator agrees to take all steps reasonably necessary to facilitate its participation in any Third Party Data Collection System implemented by APAM, including:
 - (i) consenting to the provision and transfer of all necessary inbound and outbound messages to the third party provider engaged by APAM; and
 - (ii) taking any other steps necessary to facilitate access to the Operator's data by the third party provider engaged by APAM.
- (c) For the avoidance of doubt, any implementation by APAM of a Third Party Data Collection System will not limit, change or otherwise affect the Operator's obligations and APAM's rights with respect to the provision of information directly to APAM in accordance with clause 4.2 if requested by APAM.

4.4 Invoicing and Payment of Licence Fees

- (a) APAM will provide the Operator with an invoice in electronic form each calendar month.
- (b) The invoice will detail the applicable Licence Fees for that month and any other fees and charges incurred under these Terms and Conditions.
- (c) APAM will issue a statement of account which may be in electronic form with the invoice outlining the current invoice, amounts overdue for payment, cash receipts, account adjustments, outstanding balance and statement payment due date.
- (d) The statement payment due date will be the last Business Day of the month after the month to which the invoice applies.
- (e) The Operator must pay each invoice on or before the statement payment due date.
- (f) Accounts must be paid by electronic funds transfer to APAM's nominated bank account for the time being notified by APAM to the Operator, or as otherwise agreed by APAM and the Operator.

4.5 APAM's Use of Operator's Information

APAM is permitted to use the Operator's Information for the purposes of the Facilities including but not limited to:

- (a) any lawful purpose necessary for compliance with the Airports Act, the Airports Regulations, the Security Rules or any other law;
- (b) any lawful purpose necessary for the good planning, development or operation of the Facilities;
- (c) combining the information in an aggregated form, for reporting and discussing activity and performance of the Facilities, APAM and APAC but in any event not to disclose the Operator's Information to a third party; and
- (d) calculation of fees and charges.

4.6 Failure to provide a Statement of Information

- (a) If the Operator fails to provide a Statement of Information in accordance with the time period specified in clause 4.2(a), in addition to the administration fee referred to in clause 4.2(b), fees and charges may be estimated and calculated by APAM on a 'full passenger load' basis, and the Operator shall be liable to pay the amount calculated by APAM but subject to adjustment as provided by clause 4.6(b)14.6(a).
- (b) If the amount payable by the Operator under clause 4.6(a) is different from the amount that would have been payable if the Operator had provided a correct Statement of Information as and when required by these Terms and Conditions, APAM shall, on the next occurrence of 1 July (**Adjustment Date**), allow an appropriate adjustment by way of an off-set against the fees and charges due and payable by the Operator in respect of the next invoice following the Adjustment Date.

4.7 Verification of Operator's Information

- (a) The Operator acknowledges that APAM may from time to time verify the Operator's Information provided in accordance with clause 4.2 by means including, but not limited to:
 - (i) reference to data collected by the Australian Border Force, Airservices Australia or any Relevant Authority; and
 - (ii) APAM directly collecting information including, but not limited to, counting passengers embarking and disembarking the Operator's Aircraft.
- (b) If a Statement of Information in accordance with clause 4.2 is not correctly provided, or if APAM reasonably considers a Statement of Information to be inaccurate:

- (i) APAM will notify the Operator in writing of the data APAM believes is inaccurate and its reasons why;
- (ii) the Operator shall have five Business Days in which to respond in writing to the issues raised by APAM under clause 4.7(b)(i);
- (iii) if APAM is not satisfied with the written response by the Operator, or if the Operator provides no response within the required period, the Operator must permit an independent auditor appointed by APAM to inspect the Operator's records (including those held by its agents) for the purposes of calculating correct information;
- (iv) APAM shall require the auditor to and shall itself maintain confidentiality of the Operator's Information unless required by law or the rules of a recognised stock exchange; and
- (v) APAM will adjust the fees and charges, and if necessary, in accordance with the information determined by the independent auditor.

- (c) If the amount payable by the Operator under this clause 4.7 is different from the amount that would have been payable if the Operator provided a correct Statement of Information:
 - (i) APAM shall make an appropriate adjustment to the next invoice such that the Operator will have paid the correct amount upon payment of that invoice; and
 - (ii) if the amount of the adjustment is a sum payable to APAM more than 2.5% of the correct amount of the fees and charges for that month, the Operator shall on demand pay or reimburse APAM the reasonable fee of the auditor.

4.8 Amendments to Invoices

- (a) APAM is under no obligation to change invoices or payments if it has correctly processed the Operator's Information.
- (b) APAM at its sole discretion, may alter an invoice or payment if the Operator's Information is corrected in accordance with clause 4.2(e) or is otherwise in error.

4.9 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 the reference lending rate of Westpac Banking Corporation 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 4.9(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 – \$400; or
 - (ii) any amount not paid by 90 days after the due date – \$600.
- (c) The Operator acknowledges that the late payment administration fees payable under this clause 4.9 comprise a genuine pre estimate of the loss which would be suffered by APAM arising from or in connection with the relevant breach of these Terms and Conditions.

4.10 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. If there is a dispute between the Operator and APAM, the Operator shall pay the amount in full pending resolution of the dispute.

5 GENERAL TERMS AND CONDITIONS

5.1 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 Facilities; and
- (b) the provision and installation of suppressors in motor vehicles or other plant and equipment from time to time in or about the Facilities to prevent interference with radio or television transmission or reception or with any computer, radar, communication or other electronic equipment.

5.2 Fuel and Oil Spills

- (a) The Operator must not and must ensure that the Operator's Associates do not discharge fuel, oil, lubricant or other material from any of its, its agents', its contractors' or its suppliers' aircraft, vehicles or other equipment of the Operator or any of the Operator's Associates at the Facilities or otherwise at the Airport.

- (b) Immediately after the Operator becomes aware of any discharge of fuel, oil, lubricant or other material, the Operator must:
 - (i) notify APAM; and
 - (ii) if the matter is caused by the Operator or any Operator's Associates or by carrying out the Permitted Use, the Operator must remedy the discharge at its cost.
- (c) The Operator must meet all reasonable direct and indirect and consequential expenses incurred by APAM in dealing with a breach of clause 5.2(a) by the Operator or the Operator's Associates.

5.3 Credit card data security compliance

To the extent that PCI DSS is applicable to the Operator's use of CUTE or CUSS Equipment, the Operator:

- (a) warrants that all software, products and services it provides in connection with CUTE or CUSS Equipment are PCI DSS compliant to the level stipulated by APAM;
- (b) acknowledges that it is responsible for the security of any credit cardholder data that it possesses and shall store and destroy such data in a PCI DSS compliant manner;
- (c) indemnifies APAM for any breaches of the PCI DSS by the Operator, including but not limited to any breach involving credit cardholder information obtained in the course of, or incidental to, its use of CUTE or CUSS Equipment; and
- (d) must provide to APAM on 1 July of each year during which it uses the Facilities, written confirmation that in the preceding 12 months it has been PCI DSS compliant.

5.4 Exclusion of Liability

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, APAM and the Operator and their respective directors, officers, employees, agents or affiliates are not liable to any person for special, indirect, incidental or consequential loss or damage, or loss of profits or goodwill, arising from any act or omission made in connection with these Terms and Conditions (other than an act or omission which is intended to cause loss or damage to the other party).

5.5 Indemnity

The Operator shall indemnify and keep APAM and its officers, employees and agents, from and against all claims, actions, liabilities and losses arising from, and any costs, charges and expenses incurred in connection with:

- (a) loss or loss of use of or damage to any property;

- (b) injury, disease or death to any person; or
- (c) liability suffered by APAM in respect of Occupational Health and Safety Laws arising out of any incident, injury, prosecution or any claim by any person for loss, damage, disability, disease or death allegedly suffered as a result of injury or death,
- (d) costs, claims or expenses suffered by APAM as a result of the Operator failing to comply with clause 5.11;

caused by or to the extent contributed to by:

- (e) an act or omission, negligence or default of the Operator or its employees, agents or invitees;
- (f) some danger created by the Operator or its employees, agents or invitees (whether or not the existence of that danger was or ought to have been known to it);
- (g) the operation of any equipment, machinery or thing by any person by or on behalf of the other party; or
- (h) any other act or omission or thing by or on behalf of the Operator which may arise from or in relation to its use or operation of the Facilities.

5.6 Insurance

The Operator shall:

- (a) take out a public liability insurance policy in respect of the Permitted Use carried on at the Facilities in the name of the Operator that adequately protects APAM, the Commonwealth and the Operator, and the Operator shall ensure that APAM's, the Commonwealth's 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;
- (b) take out an insurance policy in the name of the Operator, that adequately protects APAM, the Commonwealth and the Operator against damage to the Operator's property in respect of the Permitted Use, including damage arising from any installation or display installed under these Terms and Conditions and shall ensure that APAM's, the Commonwealth's 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;
- (c) take out each of the insurances described in clauses 5.6(a) and (b) with a reputable insurer and provide on demand evidence to APAM of the currency and contents of the insurance policy or policies;

- (d) require and ensure that the Operator's Associates take out insurances of the type described in clauses 5.6(a) and (b) as appropriate to their respective roles in relation to the Permitted Use;
- (e) pay punctually all premiums for the insurance effected pursuant to these Terms and Conditions and make available for inspection the insurance policies and reasonable evidence of the payment of the premiums. 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
- (f) not do anything or omit to do anything whereby any insurance effected pursuant to these Terms and Conditions may become vitiated or non-effective.

5.7 Approval by APAM

Save and except for the Operator's right to carry out work on its own equipment, facilities or installations, 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.

5.8 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 Facilities; 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 Facilities resulting from any maintenance, relocation, extension or redesign of the Facilities or from any interruption to flight or Passenger movements.

5.9 Requirements of Authorities

- (a) 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 or from the Facilities, 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.
- (b) If the Operator fails (including by way of act or omission) 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 by the Operator to APAM on demand as damages.

5.10 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 Facilities;
- (c) monitor the environmental impacts of its own activities at the Facilities and the Airport and report on them to APAM in a manner reasonably determined by APAM and 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 Facilities or the Airport;
- (d) permit APAM and APAM's Associates at any reasonable time to inspect the Operator's premises, facilities and operations at the Facilities or the Airport 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 Associates 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) keep all environmental data confidential subject to **clause 8.11** any data, environmental or otherwise in relation to any part of the Facilities or Airport except where required by Law to disclose them.

5.11 APAM's Official Capacity

- (a) The Operator acknowledges and accepts that APAM is charged with the responsibility of

administering and enforcing certain provisions of the Airports Act, the Airports Regulations and the Security Rules 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.

- (b) The Operator must comply (to the extent related to it or its use of the Facilities and the Airport) with all lawful requirements imposed by APAM in the exercise of its powers under the Airports Act, the Airports Regulations and the Security Rules.
- (c) 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 under the Airports Act, the Airports Regulations or the Security Rules 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.
- (d) The Operator waives any right to claim against APAM in respect of any exercise of APAM's powers under the Security Rules and releases APAM from any liability in respect of any exercise of APAM's powers under the Security Rules.

5.12 Ground Handling Agents

- (a) APAM reserves the exclusive right to license Ground Handling Agents at the Airport, and to determine the terms and conditions on which Ground Handling Agents operate at the Airport.
- (b) The Operator must only appoint a Ground Handling Agent that is licensed by APAM to provide ground handling services at the Airport.
- (c) The Operator must advise APAM in writing of the Operator's Ground Handling Agent and any change of Ground Handling Agent.
- (d) The Operator acknowledges that its Ground Handling Agent is an agent of the Operator for the purposes of these Terms and Conditions.

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 Default

- (a) Without limiting clause 6.2(b), if the Operator fails to observe or perform any term, condition or obligation of these Terms and Conditions, APAM may give the Operator notice requiring

the Operator to remedy such failure within a reasonable period determined by APAM (acting reasonably).

- (b) If the Operator fails to act in accordance with a notice provided by APAM under clause 6.2(a), APAM may take the required action and the Operator will bear APAM's costs and expenses of doing so, payable on demand by the Operator to APAM. Any demand for payment under this clause must be accompanied by a certificate from APAM which in the absence of manifest error will be conclusive evidence of the amount to be paid by the Operator.

6.3 Termination by APAM

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

- (a) the Operator has failed to pay to APAM within 21 days of the due date shown on any invoice issued by APAM pursuant to these Terms and Conditions, APAM has given the Operator not less than 14 days' notice in writing of its intention to terminate these Terms and Conditions if the Operator fails to pay, and the invoice remains unpaid at the expiration of the notice;
- (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 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) an Insolvency Event occurs in connection with the Operator,

and APAM may re-enter and prevent the Operator's use of the Facilities and the Airport 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 breach of these Terms and Conditions.

6.4 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 Facilities except in the case of emergency; and
- (b) if APAM allows the Operator to use the Facilities (such as in the case of emergency), the Operator

shall pay on demand all charges reasonably determined by APAM at the time or as specified from time to time on APAM's website for Facilities access.

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 Inclusive 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 inclusive 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 Assignment of Rights Without Consent Prohibited

The Operator must not:

- (a) 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; or
- (b) conduct the Permitted Use for or on behalf of any other person except as permitted by these Terms and Conditions.

8.3 Amendment

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. Clause 1.2(a) shall apply in respect of the Terms and Conditions so amended at the time the amendments take effect.

8.4 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.

8.5 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.

8.6 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.

8.7 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.

8.8 Joint and Several Liability

A reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).

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.
- (c) No oral explanation or information provided by any party to another shall:
 - (i) affect the meaning or interpretation of this document; or
 - (ii) constitute any collateral agreement, warranty or understanding between any of the parties.

8.10 Inconsistency

In the case of any inconsistency between these Terms and Conditions and:

- (a) the Airport Conditions of Use; or
- (b) an Other Agreement or any marketing or incentive or similar type agreement separately entered into by the parties to these Terms and Conditions or their respective Related Bodies Corporate,

these Terms and Conditions will prevail to the extent of the inconsistency.

8.11 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:

- (a) any information relating to the negotiations concerning the same or any information which may come to the knowledge of the Operator in the course of such negotiations or otherwise concerning the operations, dealings, transactions, agreements or commercial or financial arrangements or affairs of APAM;

- (b) any documentation of a confidential nature belonging to APAM; and
 - (c) any intellectual property of a confidential nature belonging to APAM,
- unless required by law or the rules of a recognised stock exchange.

8.12 Communications

All communications:

- (a) between APAM and the Operator; or
- (b) provided from a third party and given by APAM or the Operator to the other,

must be in the English language.

8.13 Stamp duty, rates and Taxes

- (a) The Operator shall, as between the parties, be liable for and duly pay all stamp duty, rates and Taxes (including any fine or penalty except where it arises from default by the other party) on or relating to this document and any document executed under it.
- (b) If a party other than the Operator pays any stamp duty, rates and taxes (including any fine or penalty) on or relating to this document or any document executed under it, the Operator

shall pay that amount to that party upon demand.

8.14 Withholding tax

- (a) All payments made by the Operator under this Agreement shall be made without withholding or deduction on account of Taxes unless required by any law.
- (b) If the Operator is required by any law to withhold or deduct an amount on account of Taxes from a payment made under this Agreement, the Operator shall:
 - (i) remit the amount so withheld or deducted to the relevant taxation authority as and when required by law and provide a receipt evidencing this payment to APAM; and
 - (ii) pay any additional amounts to APAM to ensure that APAM is in the same position it would have been if no withholding or deduction had been required.

8.15 Computation of time

Where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

SCHEDULE A - DEFINITIONS

In this document:

"**ABD**" means an automated bag drop unit.

"**Aeronautical Facilities**" means:

- (a) the following aircraft movement facilities at the Airport: runways, taxiways, common use aprons, airfields (including airfield grounds and roads, airside and airfield lighting) and areas for parking of ground service equipment and associated access roads;
- (b) the following international passenger terminal facilities at the Terminal:
 - (i) visual navigation aids and nose-in guidance systems;
 - (ii) the inwards and outwards baggage system including baggage make-up areas and reclaim facilities and hold and cabin luggage screening equipment;
 - (iii) toilets for the Operator's passengers and staff;
 - (iv) directional signage;
 - (v) flight information systems;
 - (vi) check-in facilities including check-in and service desks;
 - (vii) facilities to allow the Operator's passengers to board the Operator's Aircraft including, but not limited to aerobridges and boarding gate desks;
 - (viii) where passengers are not boarding aircraft via an aerobridge, suitable access to the aircraft apron and where required bussing services to the aircraft apron;
 - (ix) facilities in which the Operator's passengers may wait prior to boarding the Operator's Aircraft but excluding commercially important persons lounges;
 - (x) emergency and public address systems;
 - (xi) public areas in terminals including public amenities, lifts, escalators and moving walkways; and
- (c) the associated access infrastructure necessary to enable the Operator to use the Terminal and facilities described in paragraphs (a) and (b) above for the Permitted Use including access roads, kerbs, footpaths and walkways,

in each case as owned or operated by APAM.

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

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

"**Airport**" means Melbourne (Tullamarine) Airport.

"**Airport Conditions of Use**" means the document entitled "Airport Conditions of Use" currently in force or operation at the Airport or as amended and published from time to time.

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

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

"**APAC**" means Australia Pacific Airports Corporation Ltd ABN 89 069 775 266.

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

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

"**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 common user self-service kiosks, ABDs and service podiums.

"**CUTE Equipment**" means common user terminal equipment.

"**Department**" means the agency of the Commonwealth Government with responsibility for the administration of Commonwealth aviation legislation.

"**Domestic Terminal**" means a domestic terminal operated by APAM at the Airport including those parts of the building, walkways, passenger processing areas (including check in centres and queuing areas and luggage handling facility and collection areas), aerobridges, plant, equipment, fixtures, fittings, chattels, aprons and other facilities owned by APAM and used by airlines for domestic passenger services.

"**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.

"**Facilities**" means:

- (a) the Terminal; and
- (b) the Aeronautical Facilities.

"**Ground Handling Agent**" means any person or organisation, including the Operator or an Operator's Associate engaged by the Operator, or by the Operator and an Other Operator in conjunction, to provide the services of a ground handler, including the loading and unloading of passengers, baggage, cargo and mail to and from aircraft, in connection with the Permitted Use.

"**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 Facilities (who are not party to an aeronautical services agreement or terminal facility agreement with APAM) as set out in the **Schedule of Charges for Non-Signatories to an Aeronautical Services Agreement or Terminal Agreement If Applicable** as published by APAM on its website and amended from time to time.

"**MTOW**" means the maximum take-off weight of an aircraft.

"**Occupational Health and Safety Law**" means the *Occupational Health and Safety Act 2004* (Vic.) and any other law, guideline, order, notice, code of practice, standard or policy of any Relevant Authority relating to or dealing with:

- (a) occupational health and safety;
- (b) any Hazardous Material;
- (c) the use, storage or transportation of Hazardous Material;
- (d) the disposal, discharge or treatment of Hazardous Material; and
- (e) the spill, leakage, containment or remediation of Hazardous Material,

and all related lawful directions and Approvals.

"**Operator**" means any airline which uses the Facilities at the Airport under these Terms and Conditions, and includes its successors and permitted assigns.

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

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

"**Operator's Associates**" includes the Operator's employees, agents and contractors and their respective agents, employees and sub-contractors when they are conducting the Permitted Use or operating at the Airport on behalf of the Operator.

"**Operator's Information**" means information provided by the Operator to APAM in relation to these Terms & Conditions.

"Other Agreement" means any agreement in writing between APAM and the Operator and their respective Related Bodies Corporate (as defined in section 50 of the *Corporations Act 2001* (Cth)).

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

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

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

who is processed through the Facilities.

"PCI DSS" means Payment Card Industry Data Security Standard and is a set of comprehensive requirements adopted by the Australian banking and credit card industry for enhancing payment account data security.

"Permitted Use" means the use of the Airport for the purposes of conducting a civil aviation business, or to support and assist another person to conduct a civil aviation business, including, use of the aerodrome, the Terminal and other facilities in common with others for the purpose of:

- (a) landing, taking-off, taxiing and parking the Operator's Aircraft;
- (b) loading and unloading passengers (and baggage) from the Operator's Aircraft;
- (c) refuelling, cleaning, performing maintenance and other ground handling activities in respect of the Operator's Aircraft;
- (d) providing catering services including loading and unloading in respect of the Operator's Aircraft;
- (e) loading or unloading and processing freight being carried either:
 - (f) within Australia; or
 - (g) between locations within and outside Australia;
- (h) transporting passengers and/or freight to, from or about the Airport; and
- (i) general aviation including Operator's Aircraft accessing maintenance and other aircraft servicing facilities at the Airport,

and includes code share operations and carrying passengers on behalf of other airlines, but does not include any retail or other activities other than the sale of tickets for the carriage of passengers on the Operator's Aircraft, charging for excess baggage, arranging flight changes, selling passenger protection insurance, provision of in-flight entertainment services and other retail activities approved in writing by APAM in its discretion acting reasonably.

"Relevant Authority" means APAM (in the exercise of 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, including the Department of Agriculture and Water Resources and the Department of Immigration and Border Protection.

"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**.

"Taxes" means:

- (a) any past, present or future tax, levy, charge, rates, impost, duty, fee, deduction or withholding of any name, kind or description imposed by any political or administrative subdivision or local authority within a country; and
- (b) any interest, fine, penalty, charge or additional amount payable in relation to a tax.

"Terminal" means Terminal 2 (formerly known as the International Terminal) operated by APAM at the Airport, but does not include any Domestic Terminal or any facilities forming part of any Domestic Terminal.