

Standard Terms and Conditions relating to the provision of Internet services by Asian Pacific Telecommunications Pty Ltd (ACN 091 353 374) at 530 Little Collins Street, Melbourne, Victoria (version dated 23rd January 2002).

Terms and conditions as follows.

1. Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Additional Services means those services specified in Tab [2].

Application for Services means an application which has been completed by the Occupier.

APT Equipment means the computer equipment, servers and cabling needed to provide the Services and includes the Server.

Carriage Service Provider means a third party as nominated by APT from time to time to provide the Network Services.

Commencement Date means the date of Application for Services is accepted by APT.

Common Areas means those areas which are identified as being common areas on the Plan of Subdivision in Tab 1.

Communication Riser means the conduits within the Location in which the cabling and other lines necessary to provide the Services to the Occupier are carried.

Default Rate means the rate of interest prescribed from time to time under section 2 of the *Penalty Interest Rates Act 1983* (Vic).

Documentation means all manuals, information, passwords, security related material and all other materials provided to the Occupier by APT in respect of the Services.

Domain Hosting and **Email Services** means those services set out in Clause 6.

Force Majeure Event means an event or cause beyond the reasonable control of the party claiming force majeure including, without limitation:

- (a) act of God, lightning, storm, flood, fire, earthquake or explosion
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
- (d) the effect of any applicable laws, orders, rules or regulations of any government or other competent authority;
- (e) embargo, inability to obtain any necessary materials, equipment, facilities or qualified employees, power or water shortage, lack of transportation, failure or default by sub-contractors; and
- (f) any failure of equipment or information technology (including hardware, software and communication links).

GST means the goods and services tax as defined by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

Intellectual Property Rights means any intellectual or industrial property including, without limitation, a patent, copyright, trade mark, registered design, trade secret and rights in confidential information.

Internet means the global network of interconnected computer networks providing for the transmittal of electronic mail, on-line information, information retrieval and file transfer protocol.

Internet Access means the ability for the Occupier to gain access to the Internet and the LAN in accordance with the terms set out in Tab [2], as amended by APT from time to time, but does not include Network Services.

LAN means the local area network at the Location.

Location means 530 Little Collins Street, Melbourne.

Network Services means the provision of a carriage service over a telecommunications network (as that term is defined by the *Telecommunications Act 1997*) on the street side of the Server.

Occupier means the person named on the Application for Services as the Recipient of the relevant services.

Plan of Subdivision means the plan in Tab [2].

Server means the server or servers installed from time to time at the Location by APT.

Services means any Internet Access, Web Hosting Services, Domain Hosting, Mail Hosting and Additional Services (and includes any APT Equipment provided to the Occupier to receive any such services) which the Occupier may request from time to time pursuant to an Application for Services, but does not include the Network Services.

Tab means a numbered tab in this booklet of materials.

Term means the term stated in Clause 2.

User means a person other than the Parties who seeks access to the Internet.

Web Hosting Services means the services provided by APT set out in Clause 6 and Tab [2].

Web Site means a location accessible on the Internet through the World Wide Web and which provides multimedia content via a graphical user interface.

World Wide Web means a method of representing and obtaining graphical data and linking data items used by Internet users.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.

- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a Clause, Schedule or Tab is a reference to a clause of, or a schedule or tab to, this Agreement.
- (f) A reference to an agreement or document (including, without limitation, a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (g) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (j) A reference to an **agreement** includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (k) A reference to **dollars** and **\$** is to Australian currency.
- (l) The meaning of general words is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
- (m) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or any part of it.

1.3 Consents or approvals

If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion.

2. Term

This Agreement commences on the Commencement Date and continues until terminated in accordance with Clause 15.

3. Services

3.1 APT to provide Services

The Occupier, once it has completed an Application for Services, will be provided with the nominated services from the date that the Application for Services is accepted by APT, in accordance with these Standard Terms and Conditions.

3.2 Rules regarding the Services

From time to time, APT may make or provide rules regarding any aspect of the Services and the Occupier agrees to comply with such rules and to procure the compliance of its officers, agents, subcontractors, employees and sub-tenants. APT may amend, alter and replace such rules as it sees fit provided it gives the Occupier reasonable notice of the change to allow the Occupier to comply with this clause. The Occupier's continued use of the Services after receiving notice of the changed rules will be taken to constitute acceptance of the changes. Immediately upon having been provided with any rules made pursuant to this clause, such rules will be taken to form part of the Documentation.

3.3 Reporting Faults with the Services

The Occupier must report all faults or problems with the Services immediately upon becoming aware of such faults or problems. Emergency/After hours contact number for technician 9909 7174.

3.4 Documentation for the Services

APT will provide the Occupier with such Documentation as is required by the Occupier to receive the Services. The Occupier acknowledges that the Documentation is and remains the exclusive property of APT.

4. No Responsibility for Network Services

APT is not responsible for the Network Services, nor for any problems, faults, delays or interruptions to or failure of Network Services, all of which will be the sole responsibility of the relevant Carriage Service Provider, and will be provided to the Occupier under that Carriage Service Provider's Standard Form of Agreement (as registered with the Australian Communications Authority). APT will include in the Invoice, the charges notified to APT by the Carriage Service Provider in respect of the Occupier's use of the Network Services, but APT will otherwise have no responsibility or liability for the Network Services.

5. Internet Access

5.1 Provision of Internet Access

If requested by the Occupier pursuant to an Application for Services, APT will provide Internet Access to the Occupier in accordance with this Clause 5 and Tab [2].

5.2 Occupier acknowledgments

The Occupier acknowledges that:

- (a) APT has no responsibility or liability for the accuracy, appropriateness, functionality and legality of any information, material or software on the Internet;
- (b) Internet Access may be disrupted by factors beyond the control of APT, including, without limitation, by failures of or disruptions to the Network Services, by routine maintenance or upgrades conducted by APT or by third parties, and by peak demand; and

- (c) APT may delete any files on the Server or on any storage disks which breach the warranty given in Clause 5.4 and may make and keep any record of such files for the purposes of ensuring compliance with this Agreement.

5.3 Continuity of Internet Access

Subject to Clause 5.2(b), APT will endeavour to maintain the continuity of the Internet Access.

5.4 Occupier use of Internet Access

The Occupier warrants that neither it nor its officers, agents, sub contractors or employees will misuse the Internet Access in any way including, but not limited to, by engaging in any harassment or abuse of any persons, by transmitting or receiving (other than innocent, unsolicited, reception) any material which is illegal, unlawful, obscene, indecent, defamatory, fraudulent, menacing or in breach of any third party's rights (including Intellectual Property Rights), by repeatedly sending messages without reasonable cause or for the purpose of causing annoyance, inconvenience or needless anxiety to any person, or by using the Internet Access for the purpose of obtaining unauthorised access to any information, data or systems on the Internet. The Occupier must indemnify and hold APT harmless against any loss, damage, cost, expense, action, claim or liability arising out of or otherwise in connection with the Occupier breaching the warranty in this clause or if any third party makes an allegation that the Occupier has engaged in any conduct referred to in this clause.

5.5 Termination of Internet Access

APT may terminate, immediately and without notice, the Internet Access if it considers (on reasonable grounds) that the Occupier has breached the warranty in Clause 5.4 or if any third party makes an allegation that the Occupier has engaged in conduct referred to in Clause 5.4

5.6 Spamming

Sending unsolicited bulk, and/or commercial messages over the Internet (known as 'spamming'). It is not only harmful because of its negative impact on consumer attitudes toward APT, but also because it can overload APT's network and disrupt service to APT customers. Also, maintaining an open SMTP relay is prohibited. When a complaint is received, APT has the discretion to determine from all of the evidence whether the email recipients were from an 'opt-in' email list.

5.6 Obscene Speech or materials

Using APT's network to advertise, transmit, store, post, display or otherwise make available child pornography or obscene speech or material. APT is required by Law to notify law enforcement agencies when it becomes aware of the presence of child pornography on or being transmitted through APT's network.

5.7 Illegal or Unauthorised access to other Computers or Networks

Accessing illegally or without authorization computers, accounts or networks belonging to another party, or attempting to penetrate security measures of another individuals system (often known as 'hacking'). Also any activity that may be used as a precursor to an attempted system penetration (i.e. port scan, stealth scan, or other information gathering activity).

5.9 Distribution of Internet Viruses, worms, Trojan Horses or Other Destructive Activities

Distributing information regarding the creation of and sending internet viruses, worms, Trojan Horses, ping, flooding, mail bombing, or denial of service attacks. Also activities that disrupt the use of or interfere with the ability of others effectively use the network or any connected network, system, service or equipment.

5.10 Facilitating a Violation of this AUP

Advertising, transmitting, or otherwise make available any software, program, product or service that is designed to violate the AUP, which includes the facilitation of the means to spam, initiation of ping, flooding mailbombing, denial of service attacks, and piracy software.

5.11 Export Control Violations

Exporting encryption software over the Internet otherwise, to points outside the United States.

5.12 Usenet groups

APT reserves the right not to accept postings from newsgroups where we have actual knowledge that the content of the Newsgroup violates the AUP

5.13 Other Illegal Activities

Engaging in activities that are determined to be illegal including advertising, transmitting or otherwise making available ponzi schemes, pyramid schemes fraudulently charging credit cards and pirating software.

5.14 Other activities

Engaging in activities, whether lawful or unlawful, that APT determines to be harmful to its customers, operations, reputation, goodwill and customer relations.

6. Web Hosting Services

6.1 Provision of Web Hosting Services

If requested by the Occupier pursuant to an Application for Services, APT will provide Web Hosting Services to the Occupier in accordance with this Clause 6 and Tab [2].

6.2 Obligations of APT for Web Hosting Services

- (a) Subject to paragraph (b), APT will use reasonable endeavours to ensure that the sufficient capacity is maintained on its computer facilities to enable Users to access the Web Site. The technical capabilities of APT's computer facilities are specified in Tab [2].
- (b) APT does not warrant that Users will have continuous access to the Web Site. APT will not be liable in the event that the Web Site is unavailable to the Occupier or Users due to computer downtime attributable to malfunction, upgrades or preventative or remedial maintenance activities or by reason of any failure of or disruption to the Network Services.

6.3 Occupier's obligations for Web Site

- (a) Unless the parties expressly agree to the contrary, the Occupier shall be responsible for the design, development, modification, content and maintenance of the Web Site.
- (b) The Occupier undertakes to ensure that the Web Site:
- (i) does not infringe the Intellectual Property Rights of any person;
 - (ii) has complied with and obtained all appropriate licences, permits and permissions;
 - (iii) will not at any stage during the term of the Agreement contain material which is obscene, offensive, upsetting, defamatory, menacing, in breach of any third party's rights (including Intellectual Property Rights); and
 - (iv) does not comprise and cannot be used for any purpose or activity of an illegal, fraudulent or defamatory nature.
- (c) Unless the Supplier's written consent is obtained in advance, the Occupier shall use the Web Site for its own purposes and shall not sub-let space for any other individual or entity.
- (d) The Occupier acknowledges that APT may terminate, immediately and without notice, the Web Hosting Services if it considers (on reasonable grounds) that the Occupier has breached paragraph (b) or (c) or if a third party makes an allegation that the Occupier has breached paragraph (b), and APT will have no liability whatsoever to the Occupier in respect of any such termination.
- (e) The Occupier acknowledges that, unless agreed otherwise, the Web Hosting Services do not include maintenance of the Web Site, where APT has not agreed to maintain the Web Site. APT accepts no responsibility for any deficiency or inaccuracy in the Web Site attributable to a lack of maintenance.

6.4 Domain Name Registration

- (a) If so requested by Occupier, APT will:
- (i) procure a domain name for the Occupier; and
 - (ii) endeavour to obtain the Occupier's preferred domain name as nominated in the Application for Services.
- (b) APT does not warrant that any preferred domain name of the Occupier will be available and in any event APT accepts no liability arising out of the inability of APT to obtain the Occupier's preferred domain name or the exercise of discretion by APT in obtaining on behalf of the Occupier an alternative and reasonably comparable domain name.

6.5 Occupier warranties regarding domain name

- (a) The Occupier warrants that:
- (i) all information provided in the domain name application is true and correct; and
 - (ii) the domain name sought does not breach any legal rights of a third party, including but not limited to Intellectual Property Rights.
- (b) The Occupier acknowledges that the registration of its domain name may be the subject of licence conditions and that the licensor may revoke the licence for infringement of those conditions. The Occupier undertakes to familiarise itself with any such conditions. The Occupier shall indemnify the Supplier in respect of:
- (i) any liability arising, directly or indirectly, from a failure by the Occupier to comply with any such licence conditions; and
 - (ii) any loss, damage, cost, expense, action, claim or liability arising, directly or indirectly, out of or otherwise in connection with the Occupier's use of the domain name.

6.6 Domain and Email Hosting

If so requested by the Occupier, APT will host the Occupier's domain name on the Server and/or host electronic accounts of the Occupier on the Server.

7. Additional Services

7.1 Provision of Additional Services

If requested by Occupier pursuant to an Application for Services, or otherwise, APT will provide the Occupier with Additional Services in accordance with Tab [2].

8. APT Equipment

8.1 Rights in the APT Equipment

The Occupier has no right, title or interest in the APT Equipment, which remains the exclusive property of APT.

8.2 Occupier to ensure integrity of APT Equipment

The Occupier will ensure the physical security and safety of any APT Equipment in its possession, custody or control, or to which the Occupier has access, and will not, and will ensure that its officers, employees and sub contractors do not, interfere with, alter, change, modify, move, or remove any labels, plates, insignia, lettering or other markings on, the APT Equipment.

8.3 Reporting Faults with Equipment

The Occupier must notify APT of any faults or problems with the APT Equipment, immediately that it becomes aware of such faults or problems.

9. APT access to required areas

9.1 Access to provide Services

The Occupier grants APT access to such of the areas in the possession or control of the Occupier as are required by APT to provide the Services and the Additional Services, and in order to gain access to the APT Equipment.

10. Invoicing and charges

10.1 Fees for Services

APT will invoice the Occupier for Services (other than Network Access) in accordance with the rates and terms set out in the Tab relating to the relevant service, as amended by APT from time to time. The Occupier must pay the invoice issued by APT within seven days of receipt. Credit or charge cards and only accepted within seven days from receipt. One month's notice will be given for any adjustment in fees and charges.

10.2 Interest on late payment

If the Occupier fails to pay any amount payable by it under this Agreement by the due date, the Occupier must, if demand is made by APT, pay interest at the Default Rate on the unpaid amount, such interest to accrue daily from the time the unpaid amount falls due until the amount has been paid in full. The right to demand payment of interest under this Clause 10.2 is without prejudice to any other rights and remedies that APT may have in respect of a default in payment under this Agreement

10.3 No Refunds

The Occupier acknowledges that no amounts paid by it under this Agreement are refundable, whether or not it has received Services in respect of such amounts or in the event of termination under Clause 16

10.4 Detailed Excess Meg Usage Statements

The Occupier acknowledges that requests for any detailed Excess Meg Usage Statements, must be made within seven (7) days, of date on invoice. After that time, it is up to the discretion of APT to distribute Detailed Excess Meg Usage Statements.

10.5 Detailed Excess Meg usage Statements Fees

The Occupier agrees to pay the relevant charges for the Detailed Excess Meg Usage Statement.

11. Disclosure of personal information

The Occupier acknowledges that APT may:

- (a) disclose personal information (as defined in the *Privacy Act* 1988 (Cth)) about the Occupier to a credit reporting agency;
- (b) obtain from a credit reporting agency, and use, information concerning the Occupier's commercial activities or commercial creditworthiness to assess the Occupier's Application for Services or collect overdue amounts;
- (c) obtain and use a consumer credit report about the Occupier obtained from a credit reporting agency to assess an Application for Services or collect overdue amounts; and
- (d) exchange with another credit provider personal information derived from a credit report, or other report relating to the Occupier, to enable APT or the other credit provider to assess its creditworthiness or to collect overdue amounts,

at any time during the term of the Agreement.

12. Warranties

12.1 No warranty as to suitability

Subject to Clause 12.4, the Occupier acknowledges that the Services are supplied "as is" and that APT, its officers or employees, or any person acting or purporting to act on behalf of APT, has not made any representation to the Occupier as to the fitness for purpose or suitability for any particular purpose of the Services.

12.2 Exclusion of warranties

Subject to Clause 12.4, and to the maximum extent permitted by law, all terms and warranties, expressed or implied by any legislation, the common law, equity, trade, custom or usage or otherwise in relation to the supply of Services under this Agreement or otherwise in connection with this Agreement are expressly excluded.

12.3 No representations regarding third party rights

The Occupier acknowledges that APT, its officers or employees, or any person acting or purporting to act on behalf of APT, has not made any representation to the Occupier that the provision of the Services by APT will not infringe the rights, including but not limited to any intellectual property rights, of any third party.

12.4 Statutory warranties

- (a) Subject to paragraph (b), if any legislation implies in this Agreement any term or warranty and also prohibits provisions in a contract excluding or modifying the application of or exercise of, or liability under, that term or warranty, that term or warranty is deemed to be included in this Agreement.
- (b) The liability of APT for a breach of a term or warranty implied by paragraph (a) is limited, at the option of APT, to any one or more of the following:
 - (i) the supplying of the relevant goods or services by APT again; or
 - (ii) the payment of the cost of having the relevant goods or services supplied again.

13. Liability and indemnity

13.1 Limitation of liability

APT is not liable in any way for any indirect or consequential loss, economic losses, loss of profits, loss of income and special damages suffered or incurred by the Occupier and arising out of or otherwise in connection with APT's breach of, or negligence concerning, this Agreement.

13.2 Cap on liability

APT's aggregate liability for direct loss and damage in connection with this Agreement (including for negligence) is limited to the total amount paid by the Occupier under this Agreement in the 12 month period preceding the occurrence of the relevant event giving rise to such liability.

13.3 Indemnity by Occupier

The Occupier releases, holds harmless and indemnifies APT to the maximum extent permitted by law from and against any liability arising out of or in connection with the supply of Services under this Agreement (including, but not limited to, as a result of the negligence of APT or any person acting on its behalf) or otherwise in connection with this Agreement, but excluding APT's acts of wilful default.

14. Intellectual Property

As between APT and the Occupier, APT owns all Intellectual Property Rights in the technology used to provide the Services and in the Documentation.

15. Termination

15.1 Termination for breach by either party

Either party may terminate this Agreement immediately by notice to the other party if the other party commits a material breach of this Agreement (unless the breach is capable of remedy, in which case if the breaching party fails to remedy the breach within 30 days after being required to do so). For the avoidance of doubt, a failure to pay any money under this Agreement will be a material breach of this Agreement.

15.2 Termination on insolvency

Either party may terminate this Agreement immediately by notice to the other party if the other party:

- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) is insolvent within the meaning of section 95A of the Corporations Law;
- (c) must be presumed by a court to be insolvent by reason of section 459C(2) of the Corporations Law;
- (d) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Law);
- (e) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
- (f) has a controller within the meaning of section 9 of the Corporations Law or similar officer appointed to all or any of its assets or undertaking; or
- (g) has an application or order made, a proceeding commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, de registration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

15.3 Obligations of the Occupier on Termination

Upon termination of this Agreement whether by expiry of its term or pursuant to this Clause 15.3 or otherwise, the Occupier:

- (a) must immediately cease using all APT Equipment ;
- (b) will lose all right to Network Access and to the receipt of any Services under this Agreement; and
- (c) must immediately return the Documentation to APT.

15.4 Without prejudice to accrued rights

Termination of this Agreement does not affect the accrued rights or remedies of either party arising in any way out of this Agreement up to the date of termination, including any obligation or liability of the Occupier to pay for the Services and the Additional Services which has accrued prior to termination for the Agreement.

16. Force Majeure

Neither party will be liable to the other for a failure to perform its obligations under this Agreement, other than the obligation to pay money, which is caused by a Force Majeure Event, but only to the extent that the Force Majeure Event has caused the inability to perform the relevant obligation.

17. Notices

Any notice, demand, consent or other communication (the **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:
 - (i) to **APT:** Attention: General Manager
Fax No: 03 9909 7334
 - (ii) to **the Occupier:** Attention:
Fax No: ; and
- (c) will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two business days after the date of posting (if posted to an address in the same country) or seven business days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

18. Entire agreement

This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

19. Amendment

No amendment or variation of this Agreement is valid or binding on a party unless made in writing executed by all parties.

20. Sub contracting

APT can sub contract such of its obligations under this Agreement as it sees fit from time to time.

21. Assignment

The Occupier cannot assign this Agreement or any rights or obligations under this Agreement without the prior written consent of APT.

22. No waiver

No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

23. Further assurances

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

24. No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

25. Costs, duty and GST

25.1 Costs and stamp duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this Agreement and any instrument executed under this Agreement must be borne equally by the parties.

25.2 GST

- (a) If GST is payable in relation to the supply of any goods or services under this Agreement, the amount payable will be the fee set out in this Agreement or (where there is no set fee) as agreed between the parties plus any amount of GST payable in relation to that supply, unless the fee specified is expressed to be GST inclusive.
- (b) Subject to paragraph (a), where the consideration for the supply of goods or services is ascertained by reference to any cost or expense incurred by a party, that cost or expense is calculated by deducting from the actual cost or expense the amount of any GST input tax credit that the party can claim in respect of the cost or expense.
- (c) Each party must do everything reasonably necessary, and provide all reasonable assistance, to enable the other party to claim any input tax credit or refund in respect of any payment made under this Agreement.

26. Governing law and jurisdiction

This Agreement is governed by the laws of Victoria. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement.

27. Counterparts

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

28. PUBLIC NETWORK AND DATA SECURITY

28.1 The Customer is responsible for implementing and maintaining network & data security at the Customer's premise.

28.2 The Customer also acknowledges that the Backbone is not a secure and confidential method of communication and therefore the Customer transmits content (including data or other information) on the Backbone at its own risk.

28.3 APT does not make any representations or warranties concerning the effectiveness of the security of the Backbone.

28.4 APT is not liable for any unauthorized access to the Customer's data even where the access occurs as a result of a fault in equipment or software owned, operated or supplied by APT.

28.5 APT shall not be liable for the corruption, loss or erasure of any data stored or conveyed by the Customer on the Backbone, including any Web related Service, provided by APT. The Customer is responsible for protection of any such data and must backup all such data on a regular basis.

28.6 To the extent consistent with any applicable law, APT shall not be responsible for any content accessed by the Customer (or its customers) through the Service and as such the Customer uses any Service-accessed content solely at its own risk.

28.7 Subject to applicable law, and for the purpose of complying with any legal obligations including (without limitation) pursuant to the *Telecommunications Act 1997 (Cth)*, the *Telecommunications (Interception) Act 1979 (Cth)* or associated regulations, APT may

at any time and at its absolute discretion: (a) intercept or monitor the Service, or enable another person to intercept the Service, or data being transmitted over the Service

(b) monitor use of the Service; or

(c) suspend or examine the Service (including examination of Customer e-mail, records and other data).

29. INTERNET PROTOCOL ADDRESSES

29.1 For any Internet Protocol Addresses supplied to the Customer by APT for the Customer's use of the Service, APT conditionally grants the Customer a license ("License") to use a contiguous block of 8 Internet Protocol Addresses.

29.2 The License is granted to the Customer on the conditions that it:

is exclusive to the Customer and hence cannot be transferred and;

the Internet Protocol Addresses the License relates to, are used for the sole

purpose of connecting Customer Equipment to use the Service.

29.3 The License terminates:

immediately if the Customer breaches either of the License conditions set out in sub-clauses 29.2(a) and 29.2(b) or;

otherwise on termination of the Service or Agreement.

29.4 If the Customer requires more than the initially allocated Internet Protocol Addresses for its use of the Service, APT can provide further Addresses on a price-on-application basis. Any further issuance of Addresses will be subject to the conditions in clause 29.2.