

Standard Terms and Conditions relating to the provision of telecommunications services by Asian Pacific Telecommunications Pty Ltd (ACN 091 353 374) of 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 [# 1].

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

APT Equipment means the cabling and phone lines needed to provide the Services and includes the PABX located at Lot No. 203 on the Plan of Subdivision (the **APT PABX**), but does not include any telephones or mobile telephone handsets.

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 the 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.

Communications Risers 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.

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 subcontractors; 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, trademark, registered design, trade secret and rights in confidential information.

Invoice for Network Access means an itemised account issued by APT for Network Access.

Location means 530 Little Collins Street, Melbourne.

Network Access means the ability for the Occupier to gain access to the Network Services via the APT PABX.

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 APT PABX.

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 [1].

Services means any Network Access, Telephony Services 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.

Telephony Services means those services specified in Tab [1].

Term means the term stated in Clause 2.

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 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 14.

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 7175.

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. Network Access

4.1 Provision of Network Access

If requested by the Occupier pursuant to an Application for Services, APT will provide Occupier with Network Access in accordance with this Clause 4 and Tab [1].

4.2 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.

4.3 Disruptions to Network Access

APT is not responsible for any interruption to or delay in the Network Access which is as a result of difficulties with Network Services or other services or equipment on the street side of the APT PABX.

4.4 Telephones

APT will provide the Occupier with any telephones or mobile telephone handsets nominated on an Application for Services and title for such telephones and mobile telephone handsets will pass to Occupier upon full payment. All risk of loss or damage will pass to the Occupier upon delivery to the Occupier.

4.5 Sim Cards

If the mobile telephone nominated on the Application for Services requires a GSM digital network, APT will supply the Occupier with a Sim card. The Sim card will remain the property of the Carriage Service Provider even after delivered to the Occupier. The Occupier is authorised to use the Sim card for Network Access, but must take all reasonable steps to keep the Sim card in good working order. The Occupier must return the Sim card to APT, or to the Carriage Service Provider (and the Occupier must notify APT that it has done so), immediately upon demand by APT or the Carriage Service Provider (in which case APT will endeavour to provide the Occupier with a replacement Sim card). If the Occupier fails to return the Sim card, and APT is required to compensate a Carriage Service provider as a result, the Occupier must reimburse APT for that fee.

4.6 Information given to Carriage Service Provider

The Occupier acknowledges that any information included in an Application for Services may be provided to the Carriage Service Provider for its own uses.

5. Telephony Services

5.1 Provision of Telephony Services

If requested by Occupier pursuant to an Application for Services, APT will provide the Occupier with Telephony Services in accordance with Tab [I].

6. Additional Services

6.1 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 [I].

7. APT Equipment

7.1 Rights in the APT Equipment

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

7.2 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.

7.3 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.

8. APT access to required areas

8.1 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.

9. Invoicing and charges

9.1 Invoicing for Network Access

APT will issue the Occupier an Invoice for Network Access within seven days of receiving an invoice from the Carriage Service Provider for all charges made by the Carriage Service Provider for Network Services. The Occupier must pay the invoice issued by APT within seven days of receipt. Credit or charge cards are only accepted within seven days of receipt.

9.2 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.

9.3 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 9.3 is without prejudice to any other rights and remedies that APT may have in respect of a default in payment under this Agreement.

9.4 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 15.

9.5 Prices are subject to change with 1 month notice given to Occupier.

10. 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.

11. Warranties

11.1 No warranty as to suitability

Subject to Clause 11.4, 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.

11.2 Exclusion of warranties

Subject to Clause 11.4, 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.

11.3 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.

11.4 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.

12. Liability and indemnity

12.1 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.

12.2 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.

12.3 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.

13. 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.

14. Termination

14.1 Termination for breach by either party

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

14.2 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.

14.3 Obligations of the Occupier on Termination

Upon termination of this Agreement whether by expiry of its term or pursuant to this Clause 14.3 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.

14.4 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.

15. 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.

16. 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.

17. 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.

18. Amendment

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

19. Sub contracting

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

20. Assignment

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

21. 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.

22. 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.

23. 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.

24. Costs, duty and GST

24.1 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.

24.2 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.

25. 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.

26. Counterparts

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