

Australia Pacific Airports (Melbourne) Pty Ltd

**Terms and Conditions of Use of Aeronautical Services and
Facilities at Melbourne Airport**

Effective 1 January 2025

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Part 1 – Interpretation

1 Interpretation

1.1 Definitions

In this document:

ABD means an automated bag drop unit.

Aeronautical Charges means the fees, charges and costs as set out in the Schedule of Charges.

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

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

Aircraft means and includes fixed wing aircraft, helicopters, balloons powered or un-powered and their parts and accessories, equipment and stores.

Aircraft Operator means the person whose name appears on the Aircraft Register as the registered operator of the Aircraft or any person who, with the authority of the holder of the Certificate of Registration for the Aircraft and the written acceptance of APAM, operates that Aircraft when it arrives at or departs from the Airport as the case may be.

Aircraft Owner means that person named as the registration holder on the Aircraft Register or Certificate of Registration for the relevant Aircraft.

Aircraft Register means the register of Australian Aircraft established pursuant to Regulation 8 of the CASR.

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 from time to time and published on APAM's website at <https://www.melbourneairport.com.au/corporate/policies-and-procedures>.

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

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

Airports Regulations means regulations made pursuant to the Airports Act.

Anti-Bribery Laws means, to the extent applicable and binding, the provisions relating to anti-bribery or corruption under the *Criminal Code Act 1995* (Cth), the *Autonomous Sanctions Act 2011* (Cth) and those under any other similar applicable laws (including those under the *US Foreign Corrupt Practice Act*, the *Canadian Corruption of Foreign Public Officials Act* and the *UK Bribery Act 2010*).

Anti-Money Laundering Laws means, to the extent applicable and binding, the provisions relating to anti-money laundering under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and those under any other similar applicable laws (including those under the U.S. *Money Laundering Control Act of 1986*, the U.S. *Currency and Foreign Transactions Reporting Act of 1970*, as amended by the U.S. *Patriot Act*, the Canadian *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, and the UK *Proceeds of Crime Act 2002*).

APAM means Australia Pacific Airports (Melbourne) Pty Ltd ABN 62 076 999 114 and includes its successors and assigns, 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.

APAM Data means all data and information of any kind relating to APAM or a customer or supplier of APAM (other than the Operator) and their respective operations, business, assets, facilities or Associates, that the Operator accesses, stores, handles, hosts, obtains or generates in the course of using the Services and Facilities, whether or not confidential and includes data and information that is:

- (a) APAM Confidential Information and/or Contract Personal Information;
 - (b) stored in, processed by or retrievable from, the APAM Systems, or intended to be stored in, processed by or retrieved from, the APAM Systems;
 - (c) otherwise made available to the Operator by or on behalf of APAM in connection with these Terms and Conditions; or
 - (d) an output of the Services made available to APAM,
- and includes any results of the use or manipulation of any such data and information and any backups.

APAM Systems means all hardware, software, networks and other systems (including legacy systems) and infrastructure (including those operated or maintained by third party service providers) that is or are used by an APAM Group from time to time. APAM Systems include, without limitation:

- (a) all hardware, printers, peripherals, cables, communications devices, sensors and all other equipment whether owned or leased by APAM;
- (b) all software, firmware and all other computer programs owned, licensed or used by or on behalf of APAM (including any artificial intelligence applications), and third party software or firmware;

- (c) any hardware, software and other information technology items owned or operated by third parties for the benefit or use of APAM (such as applications service provider systems) including any legacy systems; and
- (d) any other information technology, computing or data processing items notified by APAM to the Operator from time to time, or which the Operator ought reasonably to know or consider forms part of the APAM Systems.

Approval includes any permit, licence, consent, grant, certificate or other approval, which must be obtained from a Relevant Authority.

ASA means a written binding aeronautical services agreement between APAM and the Operator which contains the terms and conditions on which the parties have agreed to the Operator's use of the Services and Facilities and expressly supersedes or applies in place of these Terms and Conditions.

Availability (Capacity) means the collective practical ability of the Services and Facilities to enable Airlines to conduct safe and efficient operations at the Airport, including operating without significant or ongoing delay.

Bank Guarantee means an unconditional undertaking (or any replacement or additional to it under clause 7.9(c)):

- (a) with an expiry date that is no earlier than 3 months after the Expiry Date;
 - (b) issued by a bank having a branch in Melbourne; and
 - (c) on terms acceptable to APAM acting reasonably,
- to pay on demand the Security Amount.

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

CASR means the *Civil Aviation Safety Regulations 1988* (Cth).

Certificate of Registration means a certificate issued pursuant to Regulation 13 of the CASR.

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

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

Commencement Date means the later of 1 July 2024 or the day on which the Operator first operates at the Airport.

Commonwealth means the Commonwealth of Australia and includes any relevant agency or department.

Contract Personal Information means any Personal Information disclosed to or collected by the Operator in the course of performing its obligations under these Terms and Conditions.

CUSS Equipment means common user self-service kiosks, ABDs and service podiums.

CUTE means common user terminal equipment.

Customer Information Form means the information required to be provided by the Operator to APAM in form of Schedule 3, as amended from time to time.

Domestic On-carriage Passenger means a person travelling on the Operator's Aircraft on an international flight who is processed through the Airport and whose journey commences and terminates within Australia, but does not include:

- (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.

Domestic Passenger means a person travelling on the Operator's Aircraft who is processed through the Airport and whose journey commences and terminates within Australia, but does not include:

- (a) an infant of less than 2 years of age;
- (b) aircrew operating the Operator's Aircraft;
- (c) aircrew travelling for the purpose of repositioning an Operator's Aircraft; or
- (d) Domestic On-carriage Passengers.

Eligible Data Breach has the meaning given in the *Privacy Act 1988* (Cth).

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.

Force Majeure means any:

- (a) accident, weather, fire, act of God, act of war, pandemic, terrorism, legally binding judgment, injunction, or action or inaction of a Court or other Relevant Authority;
- (b) emergency and unplanned repairs and maintenance;

- (c) failure of supply by a third party; or
- (d) other event,

beyond the control of the affected party which prevents, restricts or limits the performance of obligations by that party pursuant to these Terms and Conditions and which could not have been prevented, overcome or remedied by that party acting prudently.

Fuel Hydrant Infrastructure means the system of pipes and hydrants and all related pumps, equipment, facilities and infrastructure situated on the premises of the Hydrant Operator at the Airport or passing on, under or over the relevant parts of the airfield which are downstream of the fuel storage tanks.

Good Industry Practice (APAM) means the degree of skill, care and diligence which may reasonably be expected of a skilled and experienced operator of a large international airport providing aeronautical services similar to the Services and Facilities at an international airport of a similar size and nature as the Airport and includes utilising appropriate levels of personnel, materials and supplies.

Good Industry Practices (Airline Operator) means the practices required of an operator of an airline when undertaking activities similar to the Permitted Use, which are performed:

- (a) with the standard of skill, care and diligence which may reasonably be expected of a skilled and experienced, airline operator in undertaking activities similar to the Permitted Use at an international airport in Australia;
- (b) in accordance with relevant industry standards;
- (c) in a manner safe to all people and the environment;
- (d) in a manner to ensure the reliable, long term and safe operation of the Airport;
- (e) by trained and experienced personnel using high quality, safe and proper equipment and procedures; and
- (f) with appropriate levels of resources, including personnel, materials and supplies.

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 or 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 law.

Hydrant Operator has the meaning given in clause 8.2.

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); or
- (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 part of that party's assets, operations or business.

International Passenger means a person travelling on the Operator's Aircraft who is:

- (a) processed through the Airport and whose journey commences or terminates outside Australia; or
- (b) a Domestic On-carriage Passenger,

but does not include:

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

Malware means any file, program, program code, disabling or malicious device or code, product, component or computer software routine (including, but not limited to, any virus, Trojan horse, time bomb, spyware, malware, adware or other harmful or destructive code) that has, or is intended to have, the effect of:

- (a) permitting unauthorised access to or use of any part of the APAM Systems or APAM Data; or

- (b) threatening the security or integrity of a party's operations and / or the Services and Facilities or otherwise preventing, inhibiting or impairing performance of a party's operations and / or the Services and Facilities.

Modern Slavery Act means the *Modern Slavery Act 2018* (Cth) including any regulations or statutory instruments relating to that legislation.

Modern Slavery Practices means all conduct or practices that would constitute:

- (a) an offence under Divisions 270 and 271 of the *Commonwealth Criminal Code* (or that would constitute an offence if the conduct or practices had occurred in Australia) including, without limitation, slavery, servitude, forced labour, human trafficking, debt bondage, slavery-like practices, forced marriage and deceptive recruiting for labour or services;
- (b) trafficking in persons, as defined in Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000 [2005] ATS 27; or
- (c) the worst forms of child labour as defined in Article 3 of the ILO Convention (No. 182).

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 a person who causes an Aircraft to use the Airport, and to avoid doubt includes:

- (a) the relevant Aircraft Owner; and
- (b) the relevant Aircraft Operator (where the Aircraft Operator is the agent of the Aircraft Owner).

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 an Aircraft owned, leased, hired, chartered or otherwise used by the Operator at the Airport.

Operator's Associates includes the Operator's employees, agents and contractors, their respective agents, employees and sub-contractors and the Operator's Related Body Corporates' 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, and for the avoidance of doubt includes the Operator's Ground Handling Agent.

Operator's Information means information provided by the Operator to APAM in relation to these Terms and Conditions including the Statement of Information and Customer Information Form.

Other Agreement means any agreement in writing, other than these Terms and Conditions, between APAM and the Operator and their respective Related Bodies Corporate.

Other Operator means any person other than the Operator who also uses the Airport for the Permitted Use.

Passengers means Domestic Passengers, Domestic On-carriage Passengers, and International Passengers.

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, terminals 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) processing arriving or departing Domestic On-carriage Passengers (and baggage) in Terminal 2;
- (f) processing arriving or departing International Passengers (and baggage) in Terminal 2;
- (g) processing arriving or departing Domestic Passengers (and baggage) in a domestic terminal;
- (h) loading or unloading and processing freight being carried either:
 - (i) within Australia; or

- (ii) between locations within and outside Australia;
 - (i) transporting Passengers and/or freight to, from or about the Airport;
 - (j) general aviation including Operator's Aircraft accessing maintenance and other aircraft servicing facilities at the Airport; and
 - (k) 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, or as otherwise permitted by any Other Agreement between the Operator and APAM.

Personal Information has the meaning given in the Privacy Law.

Privacy Law means the *Privacy Act 1988* (Cth) and any other applicable privacy legislation, common law privacy obligations and any industry code (whether voluntary or not) by which a party is bound.

Related Body Corporate has the meaning given to that term in section 50 of the *Corporations Act 2001* (Cth).

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 Climate Change, Energy, the Environment and Water, the Department of Home Affairs and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts.

Relevant Other Agreement means an ASA and/or TFA.

Schedule of Charges means the document titled "Schedule of Charges for non-signatories to an aeronautical services agreement or terminal agreement if applicable", as amended from time to time, the latest version of which can be accessed via APAM's website at <https://www.melbourneairport.com.au/corporate/airlines>.

Security Amount means an amount specified by APAM which will be equivalent to approximately 3 months of Aeronautical Charges payable by the Operator.

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

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

Services and Facilities means the services and facilities described in Schedule 1.

SOCI Act means the *Security of Critical Infrastructure Act 2018* (Cth).

Statement of Information means the operational information required to be provided by the Operator to APAM in form of Schedule 2, as amended from time to time.

TFA means a written binding terminal services agreement between APAM and the Operator which contains the terms and conditions on which the parties have agreed to the Operator's use of domestic terminal Services and Facilities and expressly supersedes or applies in place of these Terms and Conditions.

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 2 means Terminal 2 (formerly known as the International Terminal) at the Airport.

Terms and Conditions means these terms and conditions and includes its annexures and schedules.

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of legal interpretation including the contra proferentem rule will be used to interpret a clause to the disadvantage of a party merely because that party drafted, suggested or would otherwise benefit from the clause being interpreted;
- (f) a reference to:

- (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a statutory body or authority includes any successor entity or renamed entity;
 - (iii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iv) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (v) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (vi) a right includes a benefit, remedy, discretion or power;
 - (vii) time is to local time in Melbourne;
 - (viii) '\$' or 'dollars' is a reference to Australian currency;
 - (ix) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
 - (xi) this document includes all schedules and annexures to it; and
 - (xii) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
- (g) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

1.3 Headings

Headings do not affect the interpretation of this document.

Part 2 – Provision of Services and Facilities

2 Application

2.1 Application of Terms and Conditions

These Terms and Conditions apply to any Operator using the Airport from the Commencement Date, except to the extent there is a Relevant Other Agreement in place covering the Operator's use of all or part of the Services and Facilities which expressly limits or replaces these Terms and Conditions.

2.2 Acceptance

- (a) APAM publishes a copy of these Terms and Conditions on APAM's website.
- (b) APAM may update these Terms and Conditions from time to time. If the Operator is a regular user of the Airport under these Terms and Conditions, APAM will use reasonable endeavours to provide the Operator with reasonable notice of changes to these Terms and Conditions.
- (c) Subject to clause 2.1, if the Operator uses the Services and Facilities, then this will constitute acceptance by the Operator of these Terms and Conditions and the Terms and Conditions will be binding on the parties.

2.3 Fair and reasonable terms and conditions

The Operator and APAM agree that these Terms and Conditions, which govern common use Services and Facilities provided by APAM to the Operator and Other Operators, are fair and reasonable and necessary for the safe and efficient operation of the Airport.

3 Services and Facilities to be provided by APAM

3.1 Services and Facilities generally

APAM will:

- (a) supply the Services and Facilities in accordance with:
 - (i) Good Industry Practice (APAM); and
 - (ii) all applicable laws and regulations;
- (b) provide necessary security arrangements to meet the requirements of the Security Rules and the Air Navigation Regulations; and
- (c) maintain the Airport in a clean, safe and serviceable condition sufficient to facilitate the Permitted Use, subject to Force Majeure or any other provision of these Terms and Conditions.

3.2 Operation and Management of the Services and Facilities

The Operator acknowledges APAM's exclusive right to operate and manage the Services and Facilities, including the exclusive right to:

- (a) Manage signage, advertising, retail and other concessions;
- (b) appoint and manage cleaning, maintenance, operational and other contractors for the operation and maintenance of the Services and Facilities; and
- (c) allocate facilities.

3.3 CUTE 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.

3.4 Terminal 2

Terminal 2 is an IATA Schedule Co-ordinated Airport for International Operations. If the Operator intends to use Terminal 2, the Operator must have an allocated slot from Airport Co-ordination Australia Pty Ltd ACN 082 075 901 before arriving at the Airport.

4 Use of the Airport by the Operator

4.1 Use of the Airport for the Permitted Use

- (a) The Operator is permitted to use the Services and Facilities on a non-exclusive basis in accordance with Good Industry Practices (Airline Operator) and otherwise in accordance with these Terms and Conditions to carry on the Permitted Use in common with the Other Operators.
- (b) The Operator must:
 - (i) operate at the Airport efficiently in accordance with Good Industry Practices (Airline Operator); and
 - (ii) not, and ensure its Associates do not interfere with, hinder, limit or restrict the Other Operators' use and enjoyment of the Services and Facilities or of the Airport.
- (c) Without limiting clause 3.2, the Operator acknowledges that access to the Services and Facilities is subject to and may be impacted by the requirements of Relevant Authorities, Other Operators and Availability (Capacity).
- (d) The Operator accepts the Services and Facilities with all existing infrastructure including information technology, computers, plant, equipment, fixtures, fittings and chattels within common use areas and gate lounges on an "as is where is" basis.
- (e) 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 or the right to lodge a caveat.

4.2 Operator's obligations when using the Airport

The Operator acknowledges that its use of the Airport is subject to compliance by the Operator 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, Aviation Transport Security Act 2004 (Cth) and Airservices Australia publications including aeronautical information publications, en route supplements and notices to airmen;
- (c) any Other Agreement;
- (d) these Terms and Conditions;
- (e) the Airport Conditions of Use;
- (f) CASA and Airservices Australia rules and regulations, orders, instructions, directions and notices (including those relating to air traffic control);
- (g) 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;
- (h) any demand management schemes or capacity allocation rules reasonably imposed by APAM or by any Relevant Authority including any runway demand management scheme;
- (i) any requirement to obtain and observe any relevant licenses issued by APAM including airside access licences, airside driving licences and ASIC (Aviation Security identification Card);
- (j) the Security Rules and directives on security of airports and aircraft issued by the Commonwealth; and
- (k) all relevant State and Commonwealth laws relating to employer and employee conduct.

4.3 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 the provisions in this clause 4, immediately upon the Operator engaging in the use of the Airport. The Operator is responsible for the acts, omissions, default and negligence of the Operator's Associates.

4.4 Occupational Health and Safety

- (a) Without limiting clause 4.2, the Operator must, and must ensure that the Operator's Associates, at all times:
- (i) comply with:
 - (A) all Occupational Health and Safety Laws which are applicable to the Permitted Use or use of the Services and Facilities;
 - (B) any Airport safety policies, lawful directions and notices, which have been communicated in writing to the Operator; and
 - (C) all occupational health and safety audits or inspections undertaken or required by APAM or any Relevant Authority;
 - (ii) ensure procedures are in place for the identification, assessment and management of risks in relation to any activities carried out by the Operator or the Operator's Associates;
 - (iii) 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;
 - (iv) 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;
 - (v) provide 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 Services and Facilities;
 - (vi) 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 Services and Facilities;
 - (vii) provide APAM with all reasonable assistance, access and any required occupational health and safety information as may be required to ensure that APAM has the necessary assistance, access and information to meet its obligations to comply with all Laws, policies and procedures or any directions issued in relation to occupational health and safety.
- (b) The Operator shall ensure so far as is practicable that it does not, and that the Operator's Associates do not, cause or contribute to any breach by APAM of any Occupational Health and Safety Law and shall take all steps as are practicable to assist APAM in complying with Occupational Health and Safety Laws.

4.5 Signage and Branding

- (a) These Terms and Conditions do not confer any rights on the Operator to display any advertisement, placard, sign or branding at the Airport, other than non-permanent signage identifying the Operator on any check-in counter, service desks, CUSS kiosk, ABDs or boarding gate assigned to the Operator pursuant to the Airport Conditions of Use for the purpose of carrying out the Permitted Use.
- (b) The Operator must immediately remove any advertisement, placard, sign or branding which contravenes clause 4.5(a) when so directed by APAM.

4.6 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 of the Airport;
- (c) monitor the environmental impacts of its own activities at 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 Airport;
- (d) permit APAM and APAM's Associates at any reasonable time to inspect the Operator's premises, facilities and operations at 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 Laws or requirements arising in connection with the Permitted Use; and
 - (ii) if the matter is occasioned by the Operator or any Operator's Associates or by carrying out the Permitted Use, the Operator must remedy the contamination, hazard, or breach, at its cost, to the reasonable satisfaction of APAM.

4.7 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 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 occasioned 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, indirect and consequential expenses incurred by APAM in dealing with a breach of clause 4.7(a) by the Operator or the Operator's Associates.

4.8 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; and
- (c) must provide to APAM on the Commencement Date and on 1 July of each year during the Term, written confirmation that in the preceding 12 months it has been PCI DSS compliant.

4.9 Movement of Equipment, Facilities, Activities and Aircraft

- (a) Without limiting the Airport Conditions of Use, APAM may:
 - (i) require the Operator to move or remove equipment or activities or direct that the Operator cease carrying out such activities, if, in the reasonable opinion of APAM, the Operator's equipment or activities will or may interrupt or compromise the safe and/or efficient operation of the Airport; and
 - (ii) direct the Operator either to move a parked Aircraft to another position, or remove it from the Airport.
- (b) If the Operator fails to comply with a direction from APAM under this clause 4.9 within the period specified by APAM the Operator will be liable to pay APAM's costs incurred under this clause 4.9 in moving or removing the equipment, activities or Aircraft;
- (c) Nothing in this clause 4.9, limits APAM's rights to take whatever steps may be reasonably necessary in the circumstances to maintain the safe and efficient operation of the Airport.
- (d) APAM is not liable for any Loss or damage suffered by the Operator caused directly or indirectly by APAM or APAM's Associates moving or removing the Operator's equipment or activities or Aircraft under this clause 4.9 unless caused by the negligence of APAM or APAM's Associates.

5 Airport provisions

5.1 APAM's Official Capacity

- (a) The Operator acknowledges and accepts that in addition to acting in its contractual capacity under these Terms and Conditions, APAM is also charged with the responsibility of administering and enforcing certain provisions of the Airports Act, the Airports Regulations and the Security Rules and that any conduct of APAM in its regulatory capacity is deemed not to be a breach of any of APAM's obligations under these Terms and Conditions, provided that APAM has used reasonable endeavours to perform its regulatory function without breaching its obligations under these Terms and Conditions.
- (b) 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.

5.2 Ground Handling Agents

- (a) Subject to this clause 5.2, the Operator is permitted to undertake its own Ground Handling Services.
- (b) 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.
- (c) The Operator must only appoint a Ground Handling Agent that is licensed by APAM to provide ground handling services at the Airport.
- (d) The Operator must advise APAM in writing of the Operator's Ground Handling Agent and any change of Ground Handling Agent.
- (e) The Operator acknowledges that its Ground Handling Agent is an Associate and agent of the Operator for the purposes of these Terms and Conditions.

5.3 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 Airport; and

- (b) APAM will not be liable to the Operator for any liability, loss of profit or diminution in the Operator's business carried on at or from the Airport in relation to any maintenance, relocation, extension or redesign of the Services and Facilities or from any interruption to flight or Passenger movements.

Part 3 – Payment provisions

6 Aeronautical Charges

The Operator is liable for and shall pay APAM the Aeronautical Charges and all other fees and charges payable by the Operator and invoiced by APAM in accordance with these Terms and Conditions.

7 Payment terms

7.1 Invoicing and Payment of Aeronautical Charges (in arrears)

- (a) APAM will provide the Operator with an invoice in electronic form each calendar month. APAM will use reasonable endeavours to issue the invoice within 5 Business Days after receipt of the Statement of Information under clause 7.3(b).
- (b) The invoice will detail the Aeronautical Charges payable by the Operator.
- (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 notified by APAM to the Operator, or as otherwise agreed by APAM and the Operator.

7.2 Invoicing and Payment of Aeronautical Charges (in advance)

- (a) If the Operator is an occasional user of the Services and Facilities or fails to comply with the payment provisions in clause 7.1, APAM will require payment of Aeronautical Charges in advance by giving notice in writing to the Operator (**Prepayment Notice**).
- (b) With effect from the date of the Prepayment Notice, the Operator agrees to pay in advance to APAM the estimated monthly Aeronautical Charges as determined by APAM, acting reasonably, based on the Operator's forecast use of the Services and Facilities.
- (c) Clauses 7.1(c), (d), (e) and (f) will continue to apply to the Operator after a Prepayment Notice has been given.
- (d) If the Aeronautical Charges based on the Statement of Information:
 - (i) exceed the amount paid by the Operator, APAM may issue an invoice to the Operator for the additional amounts which will be payable by the Operator within 30 days of the date of the invoice; or
 - (ii) are less than the amount paid by the Operator, APAM will apply the overpayment in the following order:
 - (A) to any other amounts then due and owing by the Operator to APAM;
 - (B) as a credit to forecast Aeronautical Charges payable by the Operator; or
 - (C) if the Operator ceases operations at the Airport, APAM will refund the Operator the overpayment, such payment due the last Business Day of the month after the month in which an invoice is issued by the Operator.

7.3 Operator's Information

- (a) Prior to the Commencement Date, the Operator must complete the Customer Information Form and provide it to APAM.
- (b) No later than midday on the 5th Business Day after the end of each calendar month the Operator uses the Airport, the Operator shall itself or shall procure its appointed Ground Handling Agent to provide APAM with a Statement of Information in electronic form (unless otherwise directed by APAM).
- (c) The Operator must, if required by notice in writing by APAM, provide information as APAM may require concerning the Operator's use of the Airport for the purposes of these Terms and Conditions. The Operator must provide any such 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.
- (d) 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.
- (e) For the purposes of calculating the applicable Aeronautical Charges, APAM may reasonably determine the classification of the Operator's services as either:
 - (i) a Passenger service;
 - (ii) a freight service; or

(iii) general aviation.

7.4 APAM's Use of Operator's Information

APAM is permitted to use the Operator's Information for the purposes of:

- (a) any lawful purpose;
- (b) combining the information in an aggregated form, for reporting and discussing activity and performance of the Airport, APAM and APAC as required by any Relevant Authority; and
- (c) calculating Aeronautical Charges.

7.5 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 7.3, Aeronautical 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 7.5(b).
- (b) If the Operator provides a Statement of Information and the amount payable by the Operator under clause 7.5(a) is different from the amount that would have been payable if the Operator had provided a 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 Aeronautical Charges due and payable by the Operator in respect of the next invoice following the Adjustment Date.

7.6 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 7.3 by any reasonable means.
- (b) If a Statement of Information in accordance with clause 7.3 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) if APAM acting reasonably is not satisfied with the written response by the Operator, or if the Operator provides no response within 5 Business Days, the Operator must permit an independent auditor appointed by APAM to inspect the Operator's records to calculate correct information; and
 - (iii) if necessary, APAM will adjust the Aeronautical Charges in accordance with the information determined by the independent auditor.
- (c) If the amount payable by the Operator under this clause 7.6 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) the Operator shall on demand pay or reimburse APAM the reasonable fee of the auditor.

7.7 Arrears of Payment

- (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 3%. 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 7.7(a), APAM reserves the right to demand, and the Operator shall pay if demanded the following late payment administration costs incurred by APAM 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.

7.8 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 written consent from APAM.

7.9 Security Amount

- (a) If requested by APAM, the Operator must provide a Bank Guarantee for the Security Amount.
- (b) If the Operator does not comply with any of its obligations under these Terms and Conditions, then APAM may call upon the Bank Guarantee without notice to the Operator to cover the cost of default and to pay any money payable under these Terms and Conditions including, without limitation, money payable as compensation or payable under an indemnity under these Terms and Conditions.
- (c) If APAM draws on the Bank Guarantee or if the Operator's operations change such that the amount of fees or charges payable per month materially increases, the Operator must deliver to APAM a replacement or additional Bank Guarantee within 7 days of request by APAM so that the amount guaranteed remains equivalent to the Security Amount.

- (d) APAM will return the Bank Guarantee, except to the extent that it has been called on, on the later of:
 - (i) the date the Operator has complied with all of its obligations under these Terms and Conditions, or
 - (ii) three months after the Operator ceases operations at the Airport.

7.10 Right of detention

- (a) If the Operator fails to pay any amount when due under these Terms and Conditions, APAM will have the right to detain and will have a lien over:
 - (i) the Aircraft in respect of which any Aeronautical Charges were incurred; and
 - (ii) any other Aircraft in respect of which the Operator in default is the Operator at the time when the right of detention and/or right of lien is exercised.
- (b) The Operator acknowledges and agrees that the Aircraft is in APAM's possession and control while the Aircraft is situated at the Airport.
- (c) If the Aeronautical Charges and all related interest are not paid within 20 Business Days of the date when the detention and/or lien begins APAM may, in any way it thinks fit, sell, remove or otherwise dispose of any Aircraft referred to in clauses 7.10(a)(i) and 7.10(a)(ii) in order to satisfy the amount due and related interest.
- (d) The right of detention and/or lien is not lost because the relevant Aircraft has departed from the Airport. The right of detention and/or lien continues and is exercisable by APAM at any time when the relevant Aircraft is at the Airport.
- (e) The rights in this clause 7.10 apply regardless of whether the amounts due were incurred by the Aircraft Operator, the Aircraft Owner or any other party on their behalf.

7.11 Liability for the charges

APAM holds the Aircraft Owner and Aircraft Operator jointly and severally liable for the payment of all amounts due and related interest incurred by an Aircraft Operator that uses the Airport, and APAM's costs directly or indirectly incurred in seeking recovery of those amounts (including legal costs on a full indemnity basis).

7.12 No Other Fees

Unless otherwise agreed with the Operator in writing, APAM agrees that no other fees or charges other than those payable under and in accordance with these Terms and Conditions or the Airport Conditions of Use will be levied or imposed by APAM on the Operator or the Operator's Associates for or in connection with the provision of the Services and Facilities pursuant to these Terms and Conditions.

Part 4 – Airport development and operational changes

8 Capacity of Services and Facilities

8.1 Managing and Expanding Capacity

- (a) APAM will use reasonable endeavours to achieve sufficient Availability (Capacity) through proactive management of the Services and Facilities to optimise available capacity subject to Force Majeure and any other provision of these Terms and Conditions.
- (b) The parties acknowledge and agree that APAM may expand capacity as and when APAM, acting reasonably, considers it appropriate to do so to ensure that there is sufficient Availability (Capacity) at the Airport.

8.2 Fuel Hydrant Infrastructure

The parties acknowledge and agree that the Fuel Hydrant Infrastructure at the Airport is constructed, owned and operated by a third party (**Hydrant Operator**), on and subject to the terms of an agreement between APAM and the Hydrant Operator.

8.3 Consultation

- (a) To the extent reasonably practicable, APAM will provide the Operator with reasonable notice of any maintenance, relocation, extension or reconfiguration work that APAM intends to undertake that could reasonably be expected to materially disrupt the Operator or materially disrupt the Operator's ability to undertake the Permitted Use.
- (b) APAM will consult with the Operator about the timing, nature and extent of the work, the effect that it may have on the Operator's operations and any interim arrangements or procedures that will apply during the period of that work.
- (c) Provided that APAM has complied with its obligations under clause 8.3(a) and 8.3(b), APAM will not be liable to the Operator for any liability, loss of profit or diminution in the Operator's business carried on at or from the Airport in relation to the impact on the Operator's business for any maintenance, capital or other works referred to in this clause 8.3.

Part 5 – Risk and liability

9 Risk

9.1 Operator's Risk

Subject to clause 9.2, the Operator uses the Airport at its own risk.

9.2 Release

The Operator releases APAM from, and agrees that APAM is not liable for, liability or loss arising from, and cost incurred in connection with:

- (a) damage, loss, injury (to person or property) or death; and
- (b) anything APAM is permitted or required to do under these Terms and Conditions, unless it is caused by the negligence or default of APAM or APAM's Associates.

10 Indemnity

10.1 Indemnity by Operator

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

- (a) loss of, or loss of use of, or damage to, any property;
- (b) incident, injury, disease or death to any person;
- (c) costs, claims or expenses suffered by APAM in relation to the Operator failing to comply with these Terms or Conditions; or
- (d) 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,

caused by, or to the extent contributed to, by:

- (e) an act or omission, negligence or default of the Operator or the Operator's Associates;
- (f) failure to comply with any applicable law by the Operator or the Operator's Associates;
- (g) some danger created by the Operator or the Operator's Associates (whether or not the existence of that danger was or ought to have been known to it);
- (h) the operation of any equipment, machinery or thing by any person by or on behalf of the Operator or the Operator's Associates; or
- (i) any other act or omission or thing by or on behalf of the Operator or the Operator's Associates which may arise from or in relation to its use or operation of the Airport;

with any such obligation to indemnify to be reduced proportionately to the extent that the relevant loss or liability in clause 10.1(a)-(d) was caused or contributed to by the default or negligence of APAM or APAM's Associates.

10.2 Exclusion of Liability

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 their performance of these Terms and Conditions (other than an act or omission which is intended to cause loss or damage to the other party).

11 Insurance

- (a) APAM shall take out insurance policies in respect of the Airport in the name of APAM as is usual practice.
- (b) The Operator shall:
 - (i) take out a public liability insurance policy in respect of the Permitted Use carried on at the Airport in the name of the Operator that adequately protects APAM, the Commonwealth and the Operator to a minimum liability and for an excess the Operator carries in the normal course of its business for any single event;
 - (ii) take out an insurance policy in the name of the Operator, that adequately protects APAM, the Commonwealth and the Operator against damage to its property in respect of the Permitted Use, to a minimum liability and for an excess the Operator carries in the normal course of its business for any single event;
 - (iii) take out each of the insurances described in clauses 11(b)(i) and (ii) with a reputable insurer and with APAM's, the Commonwealth's and the Operator's interests in the insurance evidenced in writing by the insurer.
 - (iv) provide on each anniversary of the Commencement Date or otherwise on demand evidence to APAM of the currency and contents of the insurance policy or policies;
 - (v) require that the Operator's Associates take out insurances of the type described in clauses 11(b)(i) and (ii) as appropriate to their respective roles in relation to the Permitted Use;
 - (vi) 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
 - (vii) not do anything or omit to do anything whereby any insurance effected pursuant to these Terms and Conditions may become vitiated or non-effective.

Part 6 – Default and Termination

12 Default

- (a) If the Operator fails to comply with 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.
- (b) If the Operator fails to act in accordance with a notice provided by APAM under clause 12(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.

13 Revocation of Use of the Airport

13.1 Other Rights

Nothing in this clause 13 derogates from any right of either party under the general law to exercise any right by reason of a default or repudiation by the other party.

13.2 Refusal of access

To the maximum extent permitted by any applicable laws, APAM may refuse an Aircraft or the Operator access to the Airport:

- (a) where:
 - (i) the Operator has failed to pay APAM any amount due and payable within 21 days of the due date; and
 - (ii) the overdue amount or any part of it, remains outstanding 14 days after notice is provided to the Operator that APAM intends to refuse access; or
- (b) if APAM considers that an Aircraft or the Operator may jeopardise or put at risk the safety or cause risk of damage to the Airport or Other Operators in any way.

13.3 Termination by APAM

APAM may terminate these Terms and Conditions (including the right to use the Services and Facilities under clause 4.1) 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 revoke the Operator's use of the Airport if the Operator fails to pay, and the invoice remains unpaid at the expiration of the notice;
- (b) the Operator materially fails to comply with any term, condition or obligation of these Terms and Conditions other than an inconsequential term, condition or obligation, and fails to remedy the failure within 14 days after APAM has given the Operator a notice in writing requiring the Operator to remedy the failure;
- (c) a change occurs in the business assets or financial condition of the Operator or of the Operator and its Related Bodies Corporate taken as a whole, which in the reasonable opinion of APAM may have a material adverse effect on the ability of the Operator to comply with its obligations under these Terms and Conditions; or
- (d) a representation or warranty made or taken to be made by or on behalf of the Operator in connection with these Terms and Conditions is found or notified by the Operator to be incorrect or misleading when made or taken to be made,

and APAM may prevent the Operator's use of the Airport or any part thereof but without prejudice to any claim, right of action or remedy which APAM may have against the Operator in respect of any breach of these Terms and Conditions.

13.4 Termination for Insolvency

Either party may terminate these Terms and Conditions:

- (a) by written agreement with the other party; or
- (b) by notice in writing to the other party,

on or during the continuance of an Insolvency Event occurring to the other party.

13.5 Removal of Operator's Property

The Operator must remove its property from the Airport promptly upon the expiration or sooner determination of these Terms and Conditions. Any of the Operator's property not removed from the Airport within 7 days after the expiration or determination of these Terms and Conditions shall at APAM's election and by notice in writing to the Operator, become the absolute property of APAM. The Operator must make good any damage done to any property of APAM or another person as a result of the Operator or APAM removing the Operator's property from the Airport and pay any costs of disposal of the Operator's property by APAM, less any proceeds of disposal realised by APAM. If the proceeds of disposal realised by APAM exceed the costs of disposal, then APAM will first offset the proceeds against any amount owing to APAM by the Operator and then pay any remaining amount to the Operator.

13.6 Consequences of Termination

If these Terms and Conditions are terminated in accordance with this clause 13 or any other provision of these Terms and Conditions:

- (a) the Operator acknowledges that it no longer has the right to use the Airport except in the case of emergency; and
- (b) if APAM allows the Operator to use the Airport (such as in the case of emergency), the Operator shall pay on demand all charges reasonably determined by APAM at the time and the Operator's use of the Airport, in the absence of any other terms and conditions agreed between APAM and the Operator, will be governed by these Terms and Conditions.

Part 7 – General contract provisions

14 General provisions

14.1 Airports Act

In accordance with the Airports Act, these Terms and Conditions are automatically terminated upon the creation of an interest in these Terms and Conditions in favour of a person that is, either alone or with one or more associates (as defined in the Airports Act), in a position to exercise control over either or both of:

- (a) the operation of the whole, or a substantial part of, the Airport; or
- (b) the direction to be taken in the development of the whole, or a substantial part of, the Airport.

14.2 Operator to Advise APAM

The Operator shall promptly advise APAM in writing of any change or changes in:

- (a) the name of the Operator;
- (b) the address or registered office of the Operator; or
- (c) the owner or owners of 50% or more of the shareholding in the Operator, or a change or changes in the shareholding in or management of the Operator which may result in a change in the effective control of the Operator, whether by one or a series of transactions,

which occurs after the Commencement Date.

15 Modern Slavery

- (a) The Operator must at all times:
 - (i) comply with the Modern Slavery Act;
 - (ii) implement processes and procedures to identify, remedy, manage, prevent and mitigate the risk of Modern Slavery Practices arising;
 - (iii) report to APAM the occurrence or risk of Modern Slavery Practices in its supply chains and operations relating to the Permitted Use; and
 - (iv) provide any information requested by APAM relating to this clause 15.
- (b) The Operator acknowledges and agrees that APAM has the right to disclose the information specified in clause 15(a) to any third party nominated by APAM in writing or to any Relevant Authority without prior notice or approval by the Operator.
- (c) Where the Operator identifies the occurrence or risk of Modern Slavery Practices in its own operations or within its own supply chains, it must as soon as reasonably practicable and at no cost to APAM, take all reasonable steps to rectify the occurrence or to mitigate the risk.

16 Anti-Corruption and Anti-Money Laundering Obligations

- (a) The Operator represents and warrants it has and it will comply with, and procure that its directors, officers, employees and subcontractors comply with, all Anti-Bribery Laws, and undertakes that none of any of them has or will offer, promise or give any person, or request, accept or agree to receive from any person, whether for itself or on behalf of another, a Bribe directly or indirectly in connection with these Terms and Conditions.
- (b) The Operator must:
 - (i) comply with, and ensure that its directors, officers, employees and subcontractors comply with, the Anti-Money Laundering Laws in connection with these Terms and Conditions;
 - (ii) implement, maintain, and enforce adequate procedures to prevent itself and its directors, officers, employees and subcontractors from engaging in conduct which contravenes any of the Anti-Bribery Laws or the Anti-Money Laundering Laws in connection with these Terms and Conditions; and
 - (iii) immediately notify the other party as soon as it becomes aware of a breach or possible breach of any of its obligations under this clause 16.
- (c) provide APAM with documents or information required by APAM in relation to the Operator's compliance with such obligations under this clause 16 as are related to the Anti-Bribery Laws and/or Anti-Money Laundering Laws.

17 Cybersecurity and Privacy

17.1 Ownership and use of APAM Data

- (a) All APAM Data is and remains the sole property of APAM.

- (b) No part of the APAM Data may be accessed, used or transmitted by the Operator or its Associates for any purpose other than performing the Operator's obligations under these Terms and Conditions.
- (c) The Operator must:
 - (i) keep the APAM Data secure and protect the APAM Data against unauthorised access or use, destruction, loss, disclosure or alteration;
 - (ii) comply with all laws applicable to the access, use, handling transmission and storage of the APAM Data; and
 - (iii) upon termination or expiration of these Terms and Conditions, if requested by APAM, at its own expense, delete and/or destroy all copies of the APAM Data in its possession or under its control.

17.2 Malware

If the Operator has access to the APAM Systems under these Terms and Conditions, the Operator must take all reasonable measures consistent with generally accepted industry practice to ensure that no Malware is installed, released or otherwise introduced into (or sent from) the APAM Systems or the APAM Data in the course of using the Services and Facilities.

17.3 Security breaches

If the Operator becomes aware of or suspects:

- (a) any unauthorised access to or use of, or misuse, damage or destruction to, the APAM Systems or any part of the APAM Data;
- (b) any Malware has been introduced into the APAM Systems or the APAM Data; or
- (c) an actual or potential Eligible Data Breach relating to Contract Personal Information or which may affect these Terms and Conditions or APAM,

(a **Data Incident**), then the Operator must immediately notify APAM and comply with any reasonable directions given by APAM to remedy the Data Incident and prevent any reoccurrence, at the Operator's own cost.

17.4 Data Security Audit

- (a) APAM may at any time, by giving the Operator at least 5 Business Days' notice in writing, conduct an audit of the Operator's compliance with this clause 17.
- (b) If APAM conducts an audit under clause 17.4(a), the Operator must, at its cost, give APAM any assistance required to conduct the audit, including access to all data, records and other information in the possession or control of the Operator or any of its Associates (or verified copies) requested by APAM.
- (c) If an audit reveals a breach of this clause 17.4 by the Operator, the Operator will be required to reimburse APAM the costs incurred by APAM in conducting the audit (without limiting APAM's other rights and remedies under these Terms and Conditions or at law).

17.5 Security of Critical Infrastructure

- (a) The Operator acknowledges that APAM is the Responsible Entity (as defined by clause 12L of the SOCI Act) for a Critical Infrastructure Asset (as defined by section 9 of the SOCI Act) and therefore has obligations under the SOCI Act.
- (b) Without limiting its other obligations under these Terms and Conditions, the Operator will immediately provide APAM with any information requested by APAM, and otherwise co-operate with APAM to the extent necessary, to ensure APAM can comply with its obligations under the SOCI Act, including its reporting and risk management obligations.

18 Taxes

18.1 Goods and services tax

- (a) In this clause:
 - (i) expressions which are not defined, but which have a defined meaning in the GST Law, have the same meaning; and
 - (ii) **GST Law** has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (b) 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.
- (c) 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.
- (d) 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 18.1(b) and payments to give effect to the adjustment must be made and the supplier must issue an adjustment note.

18.2 Withholding tax

- (a) All payments made by the Operator under these Terms and Conditions shall be made without withholding or deduction on account of Taxes unless such withholding or deduction is required by any law.
- (b) In the event that any law requires the Operator to withhold or deduct an amount on account of Taxes from a payment made under these Terms and Conditions, the Operator shall:
 - (i) make such withholding or deduction and remit the amount so withheld or deducted to the relevant taxation authority within the time required by the relevant law;
 - (ii) provide APAM with a receipt evidencing the payment of the amount withheld or deducted to the relevant taxation authority; and
 - (iii) pay such additional amounts to APAM as are necessary to ensure that APAM receives, net of any deductions or withholdings, an aggregate amount equal to the amount that APAM would have received had no withholding or deduction been required.

19 Notices

Any notice, demand, consent or other communication (**Notice**) given or made under these Terms and Conditions:

- (a) must be in writing in the English language and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or 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 email to the address or email address last notified by the parties to each other.

20 Miscellaneous

20.1 Inconsistency

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

- (a) the annexures of these Terms and Conditions;
- (b) the Airport Conditions of Use; or
- (c) any Other Agreement (excluding a Relevant 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.

20.2 Stamp duty

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

20.3 Legal costs

Subject to any express provision in this document to the contrary, each party shall bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this document.

20.4 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.

20.5 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws in force in Victoria, Australia.
- (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.

20.6 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).

20.7 Entire understanding

- (a) This document embodies the entire understanding and agreement between the parties as to the conduct of the Permitted Use and the provision of the Services and Facilities.
- (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.
- (d) For the avoidance of doubt, nothing in these Terms and Conditions abrogates or limits a party's rights against the other party in respect of a prior or existing breach of any Other Agreement.

20.8 No Partnership

These Terms and Conditions does not create a partnership, joint venture or principal and agent relationship between the parties. Unless otherwise expressly stated a party does not have the authority to bind any other party or act as agent for any other party.

20.9 Confidentiality

- (a) Subject to clause 20.9(b), a party must not, at any time before or after the termination of these Terms and Conditions, without the consent of the other party, use or disclose or allow its Associates to use or disclose to any third party any of the following:
 - (i) the commercial basis of these Terms and Conditions (including APAM's and Operator's Information and fees paid) or any information concerning the operations, dealings, transactions, agreements or commercial or financial arrangements or affairs of the other party;
 - (ii) occupational health and safety data about the Services and Facilities or any part of the Airport;
 - (iii) all environmental data;
 - (iv) in the case of APAM, the APAM Data, Contract Personal Information and information in relation to the APAM Systems, and APAM's strategies, practices and procedures; and
 - (v) any documentation or intellectual property of a confidential nature belonging to the other party.
- (b) The restrictions imposed by clause 20.9(a) do not apply to the disclosure of any information:
 - (i) which is expressly authorised to be disclosed to a third party by these Terms and Conditions;
 - (ii) to other contractors, officers, employees, consultants, advisers and agents of a party to the extent that the disclosure of such information is reasonably necessary to enable the relevant person to perform any contract, provide services or perform any duties in connection with these Terms and Conditions; and
 - (iii) which is required to be disclosed by any Law, including an act of law of a foreign jurisdiction.

20.10 Non-disparagement

The Operator will not and must procure that its Associates do not bring the name or reputation of APAM into disrepute or otherwise disparage, denigrate or do any act that would give rise to adverse publicity for APAM.

20.11 Force Majeure

- (a) The parties' obligations under this Agreement are subject to Force Majeure.
- (b) If an event of Force Majeure occurs, the impacted party must, as soon as reasonably possible, notify the other party to the extent that it is unable to perform its obligations under this Agreement.
- (c) The impacted party must use reasonable endeavours to mitigate the impact of the event of Force Majeure, provided that APAM retains absolute discretion to take the mitigation action it considers reasonable in the circumstances.
- (d) Subject to a party complying with clauses 20.11(b) and 20.11(c), the party's obligations under this Agreement are suspended to the extent of the event of Force Majeure.

20.12 Survival of Terms

Any provision of these Terms and Conditions which is capable of operating following the expiration or sooner determination of these Terms and Conditions will continue to remain in full force and effect.

20.13 Personal Information

Without limiting the effect of any privacy collection notice provided by APAM to the Operator, the Operator acknowledges and agrees that APAM may and will collect, use and handle Personal Information as described in and in accordance with its privacy policy at <https://www.melbourneairport.com.au/privacy-policy>.

Schedule 1 - Services and Facilities

This Schedule 1 describes Services and Facilities APAM will provide to the Operator at the Airport (in common use with others) pursuant to these Terms and Conditions and is subject to Force Majeure.

The Operator's access to the Services and Facilities set out in this Schedule 1 is subject to:

- (a) any curfews, black-out periods or similar restrictions or prohibitions imposed by any Relevant Authority; and
- (b) any maintenance, relocation, extension, re-design, capital or other works from time to time undertaken by APAM which may restrict access to the Services and Facilities.

This schedule may be varied by agreement in writing between the parties.

1 Aircraft movement facilities and services (for Operator without an ASA)

APAM will provide the Operator and the Operator's Associates with 24 hour access to:

- (a) the runways, taxiways, and common use aprons;
- (b) the airfield in general and in particular the airfield grounds and roads, and airside and airfield lighting; and
- (c) areas for the parking of the Operator's and its Ground Handling Agent's ground service equipment, at the Airport for the purpose of carrying out the Permitted Use.

APAM will provide these facilities and services in a safe and efficient manner and will ensure that they meet the standards set by Relevant Authorities, both airside and landside.

2 International Passenger terminal services (for Operator without an ASA)

APAM will provide the Operator and the Operator's Associates with 24 hour access to:

- (a) visual navigation aids and nose-in guidance systems;
- (b) the inwards and outwards baggage system including baggage make-up areas and reclaim facilities and hold and cabin luggage screening equipment;
- (c) toilets for the Operator's Passengers and staff;
- (d) directional signage;
- (e) flight information systems;
- (f) check-in facilities including, if required, check-in and service desks, CUTE and CUSS Equipment;
- (g) facilities to allow the Operator's Passengers to board the Operator's Aircraft including, but not limited to:
 - (i) aerobridges and boarding gate desks; and
 - (ii) where Passengers are not boarding aircraft via an aerobridge, suitable access to the aircraft apron and, where required, bussing services to the aircraft apron including co-ordination of bussing operations, provision of bussing lounges for bussing Passengers to wait in and facilitation of boarding by Passengers with reduced mobility;
- (h) facilities in which the Operator's Passengers may wait prior to boarding the Operator's Aircraft but excluding commercially important persons lounges;
- (i) emergency and public address systems; and
- (j) public areas in terminals including public amenities, lifts, escalators and moving walkways.

APAM will provide these facilities and services in a safe and efficient manner and will ensure that they meet the standards set by Relevant Authorities.

APAM will provide terminal safety and security services, including but not limited to the screening of Passengers and their accompanied baggage, in accordance with the standards set by any Relevant Authorities.

3 Domestic Passenger terminal services (if not expressly agreed in a TFA)

APAM will provide the Operator and the Operator's Associates with 24 hour access to:

- (a) visual navigation aids and nose-in guidance systems;
- (b) the inwards and outwards baggage system including baggage make-up areas and reclaim facilities and hold and cabin luggage screening equipment;
- (c) toilets for the Operator's Passengers and staff;
- (d) directional signage;
- (e) flight information systems;
- (f) check-in facilities including, if required, check-in and service desks, CUTE and CUSS Equipment;
- (g) facilities to allow the Operator's Passengers to board the Operator's Aircraft including, but not limited to:
 - (i) aerobridges and boarding gate desks; and
 - (ii) where Passengers are not boarding aircraft via an aerobridge, suitable access to the aircraft apron;

- (h) facilities in which the Operator's Passengers may wait prior to boarding the Operator's Aircraft but excluding commercially important persons lounges;
- (i) emergency and public address systems; and
- (j) public areas in terminals including public amenities, lifts, escalators and moving walkways.

APAM will provide these facilities and services in a safe and efficient manner and will ensure that they meet the standards set by Relevant Authorities.

APAM will provide terminal safety and security services, including but not limited to the screening of Passengers and their accompanied baggage, in accordance with the standards set by any Relevant Authorities.

4 Access services

APAM will provide and manage in a safe, prudent and efficient way the necessary infrastructure to enable the Operator and the Operator's Associates to access the Operator's Aircraft, facilities and other premises at the Airport.

This infrastructure includes, but is not limited to roads (including kerb and guttering), footpaths, covered walkways and signage.

5 Other services provided by APAM but not under these Terms and Conditions

Under these Terms and Conditions APAM does not provide the following other services. However, APAM may provide these other services to the Operator under Other Agreements, including a Relevant Other Agreement. Other services include, but are not limited to:

- (a) offices for the use of the Operator or its ground handling agents;
- (b) lounges for commercially important persons;
- (c) sites or buildings for the Operator to undertake any activity that APAM and the Operator may agree;
- (d) car parking facilities for the Operator's Associates and Passengers;
- (e) boarding pass and bag tag stock for CUTE;
- (f) priority rights to gates;
- (g) branding, signage and advertising;
- (h) priority lanes for security screening for Passengers and staff;
- (i) nominated ground handling equipment storage areas;
- (j) access to aerobridges for Domestic Passengers; and
- (k) other premium services.

Schedule 2 - Operator's Statement of Information

Requirements for the Operator's Statement of Information	
1.	The movements of all of the Operator's Aircraft referenced to each aircraft movement during each day.
2.	The number of arriving passengers and departing passengers with the information broken down to show:
	(a) International Passengers;
	(b) Domestic Passengers;
	(c) Domestic On-carriage Passengers;
	(d) Transit Passengers;
	(e) Transfer Passengers;
	(f) infants of less than 2 years of age;
	(g) aircrew operating the Operator's Aircraft;
	(h) aircrew travelling for the purpose of repositioning an Operator's Aircraft;
	(i) and their baggage referenced to each Operator's Aircraft movement during each day; and
	(j) the volume of cargo and mail embarked and disembarked in kilograms at the Airport referenced to each Operator's Aircraft movement during each day.
3.	On the Commencement Date, if not already provided to APAM, 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 Airport as and when this occurs.

Schedule 3 – Customer Information Form

Operational Requirements	
Type of Customer / Flight Category	<input type="checkbox"/> Passenger <input type="checkbox"/> Freighter <input type="checkbox"/> Other <u>(Please Specify)</u> Is this a Charter Flight? <input type="checkbox"/> Yes <input type="checkbox"/> No
Operator Name	
Aircraft Type	
Aircraft Registration	
MTOW	
Purpose of Flight	
Scheduled Date/Time of Departure	
Scheduled Date/Time of Arrival	
Origin Port	
Number of Passengers	
Number of Crew	
Ground Handler	
Services Requested/Required	<input type="checkbox"/> Landing <input type="checkbox"/> Parking <input type="checkbox"/> Bussing <input type="checkbox"/> Terminal Facilities <input type="checkbox"/> Jet Base <input type="checkbox"/> Security/Screening <input type="checkbox"/> Other <u>(Please Specify)</u>
Brief Description of Service Requirements	
Operator Business Details	
Company or business name	
Trading name	
ABN (if applicable)	
Business address	
Business telephone	
Contact name	
Position title	
Email address	
Billing Information (if different from Operator Business Details above)	
Company or business name	
Trading name	
ABN (if applicable)	
Business address	
Business telephone	
Contact name	
Position title	
Email address	