

Asia Pacific Internet Development Trust

Request for Tenders for transfer of IPv4 Address Space

Stage 1 – 43/9 (8,388,608 IPv4 addresses in total)

Tenders Due

By: 17:00 AEST 22 June 2020 (UTC+10)

to: AU-FM-APIDT-TENDER@KPMG.COM.AU

Contents

| | | |
|---------------|--|----------|
| Part 1 | Introduction..... | 3 |
| 1. | Background to APIDT and Request for Tenders Process | 3 |
| 2. | This Request for Tenders..... | 4 |
| Part 2 | Tender Conditions | 6 |
| 1. | Interpretation of Process and Defined Terms | 6 |
| 2. | RFT and submission of Tenders | 9 |
| 3. | Acceptance period of Tenders | 10 |
| 4. | Application of these Tender Conditions..... | 10 |
| 5. | Status of RFT..... | 11 |
| 6. | Accuracy of RFT..... | 11 |
| 7. | Additions and amendments to RFT | 12 |
| 8. | Representations | 12 |
| 9. | Status of Tender | 12 |
| 10. | Tender Documents..... | 13 |
| 11. | Transfer Contract | 13 |
| 12. | Evaluation | 14 |
| 13. | Obligations to Notify..... | 15 |
| 14. | Illegible content, alteration and erasures | 16 |
| 15. | Probity and Requests for Clarification | 16 |
| 16. | Anti-Competitive Conduct..... | 17 |
| 17. | Conflict of Interest | 17 |
| 18. | Licence to use Intellectual Property Rights | 18 |
| 19. | Disclosure of Tender Contents and Tender Information | 18 |
| 20. | Successful Tenderers..... | 18 |
| 21. | Tenderer Warranties | 19 |
| 22. | Responsibility for Tendering Costs | 19 |
| 23. | Complaints about Tendering Process | 19 |
| 24. | Governing Law | 20 |
| Schedule 1 | Standard Transfer Agreement..... | 21 |
| Schedule 2 | Form of Tender | 22 |

Part 1 Introduction

1. Background to APIDT and Request for Tenders Process

APIDTT Pty Ltd ACN 638 389 072 in its capacity as trustee for the Asia Pacific Internet Development Trust (**APIDT**) (apitd.org) is seeking Tenders for the transfer of IPv4 address space in the ranges of 43/9, 43.128/10, and 43.192/11.

The Asia Pacific Internet Development Trust was established to fund Internet development initiatives in the Asia Pacific region, including technical skills development and capacity building, improvements to critical Internet infrastructure, supporting research and development, and improving the community's capability to build an open, global, stable and secure Internet.

APIDT is a joint initiative of the WIDE Project and APNIC. The sale of the transferred address space will provide the initial capital funding for APIDT. The proceeds of the fund will support the aims of the Trust.

On 25 March 2020 APIDT announced that on 25 March 2020 it had received a transfer of a range of historical IPv4 address space, from WIDE Project, Japan, on two conditions: that it be offered for sale on the IPv4 address market, and that the proceeds be used in support of Internet development in the Asia Pacific region. On 11 May 2020 APIDT published the [APIDT Address Space Request for Tender Process](#)

The Request for Tenders Process is being conducted by APIDT in accordance with the:

- [APIDT Address Space Request for Tender Process](#); and
- Objects of the APIDT as set out in clause 3 of the APIDT Trust Deed, available at <https://www.apidt.org/wp-content/uploads/2020/03/apid-trust-deed.pdf>

The Address Space transferred to APIDT is the remaining historical IPv4 space within 43/8, a "Class A" block which was assigned by the IANA (the Internet Assigned Numbers Authority) to the WIDE Project in 1991. The transfer was performed under the [APNIC Historical Resource Transfer Policy](#).

The transferred space comprises three IPv4 address ranges: 43/9, 43.128/10 and 43.192/11, equivalent to seven-eighths of the original 43/8 block, or a total of 14,680,064 IPv4 addresses.

In each Stage, the available Address Space will be subdivided into Blocks and Tenderers may Tender for one or more of the Blocks (up to and including the Number of Blocks available), as follows.

| Stage | Prefix | Block Size | Number of Blocks | Number of Addresses | |
|--------------|-----------|------------|------------------|---------------------|------------|
| | | | | Per Block | In Total |
| 1 | 43/9 | /12 | 8 | 1,048,576 | 8,388,608 |
| 2 | 43.128/10 | /14 | 16 | 262,144 | 4,194,304 |
| 3 | 43.192/11 | /16 | 32 | 65,536 | 2,097,152 |
| Total | | | | | 14,680,064 |

2. This Request for Tenders

- 2.1 This Request for Tenders is Stage 1 of the Process for up to 8 Blocks of /12 in the 43/9 Address Space. Each Block contains 1,048,576 IPv4 addresses and in total there are 8,388,608 addresses available in this Stage.
- 2.2 A Tenderer may submit a Tender for one or more whole numbers of Blocks (up to and including all 8 available) on the basis of their Tender Price per address.
- 2.3 A Tenderer may indicate that it is willing to acquire a smaller whole number of Blocks than Tendered for, at the same Tender Price, which the Trustee may take into account when determining the Successful Tenderer(s).
- 2.4 Any Tenderer which is successful in this Stage of the Request for Tender Process (and their related entities) will be ineligible to take part in a subsequent Stage of the Request for Tender Process.
- 2.5 The time table for Stage 1 of the process is:

| Activity | Date (AEST) | Comments |
|--|-------------------------------|---|
| Release of RFT | 25 May 2020 (Fixed) | This Document becomes available at www.apidt.org |
| Closing Date and Time | 17:00 on 22 June 2020 (Fixed) | Tenders must be submitted and received by this time and date. |
| Evaluation Complete | 20 July 2020 (Intended) | Successful Tenderer(s) to be notified |
| Payment in full due (30 days after notification to Successful Tenderer(s)) | by 20 August 2020 (Intended) | Payment must be received by APIDT by this time. |
| Transfer of Addresses Complete | 28 August 2020 (Intended) | Subject to registration of transfer by the Applicable Registry. |

NOTE: Dates and times are expressed in the AEST (UTC+10) time zone.

- 2.6 Tenderers must submit their binding final offers, including the following information in the form set out in Schedule 2 of Part 2:
- Full identity of bidding party, and Applicable Registry Membership ID (if available), or confirmation of details of registration as a body corporate in a jurisdiction in the APNIC Service Region;
 - Number of Blocks, and total price offered (in USD); and an indication of whether a lower number of Blocks will be accepted (at the same price per address).
 - A transfer Contract fully and properly executed for the Tenderer;
 - Documentation required to justify need according to Applicable Registry policy (unless already pre-approved by an Applicable Registry for a transfer of the requested size); and
 - Signed agreement to the terms of the Request for Tender Process,

by 17:00 AEST on 22 June 2020, by email to au-fm-apidt-tender@kpmg.com.au.

- 2.7 By submitting a Tender, each Tenderer irrevocably agrees to be bound by the terms of the Tender Conditions set out in Part 2 of this document.
- 2.8 Tenders will be assessed and the transfer Contract entered into by APIDT at the sole discretion of APIDT, based on an evaluation of all complying Tenders received in accordance with the Evaluation Criteria including:
- the Tender Price;
 - the ability of the Tenderer to comply with the Tender Conditions and terms of the Standard Transfer Agreement (or other terms acceptable to APIDT) including the requirements to be able to complete the purchase and payment of the Tender Price within 30 days,
 - the Tenderer's membership of an Applicable Registry from at least 11 May 2020 up to and including the time of Tender submission, or the Tenderer being an organisation incorporated in an economy within the APNIC Service Region; and
 - the Tenderer's agreement to be bound to all Applicable Registry policies and procedures and the Tender Conditions.
- 2.9 Transfer of the Address Space will be subject to payment in full of the Tender Price, and subject to the Applicable Registry's policies.
- 2.10 APIDT may decline any or all bids at its sole discretion.
- 2.11 Any Address Space which remains unsold after the conclusion of this process may be offered for sale again, or retained by APIDT for disposal at a later time, at its sole discretion.
- 2.12 The Tenderer irrevocably consents to each of APIDT, an Applicable Registry, KPMG and Maddocks disclosing any information they may receive or hold regarding the Tenderer or its Tender (including the status of the Tenderer's membership or application for membership of an Applicable Registry or the status of its request for pre-approval) to one another for the purposes of the evaluation of the Tenderer's Tender and for no other purpose other than with the prior written consent of the Tenderer or as required or permitted by law.

Part 2 Tender Conditions

1. Interpretation of Process and Defined Terms

1.1 Interpretation

1.1.1 Words and headings

In this document, unless expressed to the contrary:

- (a) words denoting the singular include the plural and vice versa;
- (b) the word 'includes' in any form is not a word of limitation;
- (c) where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) headings and sub-headings are for ease of reference only and do not affect the interpretation of this document; and
- (e) no rule of construction applies to the disadvantage of the party preparing this document on the basis that it prepared or put forward this document or any part of it.

1.1.2 Specific references

In this document, unless expressed to the contrary, a reference to:

- (a) a gender includes all other genders;
- (b) any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- (c) any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- (d) writing includes writing in digital form;
- (e) 'this document' is to this document as amended from time to time;
- (f) '\$', 'dollars', 'USD\$' or 'USD' is a reference to United States Dollars;
- (g) a time or date is a reference to a time or date in AEST;
- (h) a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this document;
- (i) any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- (j) a person includes a firm, partnership, joint venture, association, corporation or other body corporate;

- (k) a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- (l) any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

1.2 Defined Terms

In these Tender Conditions, unless the context requires otherwise:

Address Rights has the same meaning as in the Standard Transfer Agreement.

Address Space means the following portions of IPv4 block 43/8:

Stage 1: 43.0.0.0/9, Minimum block size: /12 (up to 8 Blocks available in total),

and includes the right to allocate those addresses to third parties or to nominate third parties to hold, access or use those addresses.

AEST means Australian Eastern Standard Time (UTC + 10 hours).

APIDT means APIDTT Pty Ltd ACN 638 389 072 in its capacity as Trustee of the Asia Pacific Internet Development Trust.

APIDT Contact Officer means the tender officer at tenders@apidt.org

APNIC means the Asia Pacific Network Information Centre.

APNIC NIR means a National Internet Registry recognised by APNIC.

APNIC Service Region means each of the jurisdictions comprised in the region served by APNIC in its function as a regional Internet registry listed at <<https://www.apnic.net/about-apnic/corporate-documents/documents/corporate/apnic-service-region/>>.

Applicable Registry means APNIC or an APNIC NIR as the case may be.

Block means a part of the Address Space for which a Tenderer may submit a Tender to acquire.

Closing Date & Time means 17:00 AEST (UTC+10) on 22 June 2020.

Contract means either the Standard Transfer Agreement or a contract for the transfer of the Address Rights in respect of the Transfer Addresses nominated by the Tenderer in a form acceptable to APIDT.

Control in respect of an Entity, means the ability to control the operational or financial decisions of the Entity including, without limitation, where the Entity is a body corporate, the ability to exercise votes in respect of more than 50% of the total securities with voting rights on issue.

Eligibility Criteria means the criteria set out in clause 5.1.

Eligible Tenderer means an Entity that meets the Eligibility Criteria.

Entity means a legal person.

Evaluation Criteria means the criteria set out in clause 12.1.1 of the Tender Conditions.

Evaluator means each of APIDT, KPMG and Maddocks.

Form of Tender means the form of tender set out in Schedule 2.

Holding Company means, in respect of an Entity, a body corporate which may exercise Control over the Entity.

KPMG means KPMG ABN 51 194 660 183 of Level 16 Riparian Plaza, 71 Eagle St, Brisbane 4000, Australia.

Maddocks means Maddocks ABN 63 478 951 337 of Level 25, Tower 2, Collins Square, 727 Collins Street Melbourne 3008 Australia.

Officer of an Entity means a person who:

- (a) is a member of the board or other governing body of the Entity (including a company director or secretary whether or not formally appointed); or
- (b) is any person who makes or participates in the making of decisions that affect the whole or a substantial part of the business or operations of the Entity; or
- (c) who has the ability to affect the Entity's financial standing; or
- (d) the Entity is accustomed to acting in accordance with their wishes or directions (whether directly or indirectly communicated), but

does not include a liquidator, receiver or receiver and manager, external administrator or professional advisor acting in the usual course of their duties or professional occupation.

Related Party of an Entity includes:

- (a) a Holding Company or Subsidiary of the Entity;
- (b) another Subsidiary of a Holding Company of the Entity;
- (c) a beneficiary of any trust for which the Entity is trustee;
- (d) the trustee of any trust of which the Entity is a beneficiary;
- (e) a holder of more than 5% of the issued securities of the Entity or a Related Party of such a holder;
- (f) an Officer of the Entity or any person or entity referred to in paragraphs (a) to (e); and
- (g) a spouse or member of the immediate family of the Entity (if the Entity is a natural person) or a person referred to in paragraphs (a) to (f).

RFT means this Request for Tender.

Sale means the transfer of a specified Block of the Address Space in exchange for monetary consideration by means of a Stage of the Request for Tenders Process.

Request for Tenders Process means the process by which Tenderers submit binding Tenders to be transferred a specified Block of the Address Space in exchange for payment

of monetary consideration to the Trustee, and the completion of the Sale by the Successful Tenderer, in the Stages.

Stage means a stage of the Request for Tenders Process defined in the definition of Address Space.

Standard Transfer Agreement means the terms and conditions set out in in Schedule 1.

Subsidiary means, in respect of an Entity, a body corporate over which the Entity may exercise Control.

Tender means a Tenderer's response to this RFT in the form of the Form of Tender containing an offer to receive the transfer of one or more whole Blocks of the Address Space in accordance with the Contract.

Tender Price means the total price offered by the Tenderer in USD, calculated as the product of the price per address and the total number of addresses in the Transfer Addresses.

Tender Conditions means these tender conditions.

Tenderer means a person or body corporate who lodges a Tender in accordance with this RFT.

Tendering Process means the process commenced by the issuing of this RFT and concluding upon formal announcement by APIDT of the selection of a successful Tenderer(s) or upon the earlier termination of the process.

Transfer Addresses means the addresses included in the Blocks of the Address Space:

- (a) specified in the Tender; or
- (b) if the Tenderer has indicated it is willing to receive less than the full amount of addresses specified in the Tender, the Blocks determined by APIDT not exceeding the amount specified in the Tender.

2. RFT and submission of Tenders

2.1 RFT invitation

- 2.1.1 APIDT invites Eligible Tenderers to submit a Tender to acquire the Address Rights in respect of the Transfer Addresses it specifies from APIDT on the terms of these Tender Conditions.
- 2.1.2 The Successful Tender will be required to enter into and complete the Contract with APIDT, including but not limited to making payment of the Tender Price within 30 days after being notified of the acceptance of its Tender by APIDT.
- 2.1.3 An Entity or a Related Party of an Entity which has been a Successful Tenderer in respect of an earlier Stage of the Request for Tender Process will be ineligible to submit a Tender for a later Stage of the Request for Tender Process.
- 2.1.4 APIDT may reject any Tender submitted by any Entity that it considers on reasonable grounds not to be an Eligible Tenderer.

2.2 Submission

2.2.1 In order to submit a Tender, Tenderers must submit a Tender by email to au-fm-apidt-tender@kpmg.com.au by the Closing Date & Time.

2.2.2 Each document forming the Tender must not be greater than 20 Mb in size.

2.3 Late Tenders

2.3.1 The Closing Date & Time may be extended by APIDT in its absolute discretion by providing written notice to Tenderers.

2.3.2 Tenders and, subject to sections 13.1 and 13.2, any corrections or amendments to Tenders, must be lodged by the Closing Date & Time.

2.3.3 Tenders lodged after the Closing Date & Time or lodged in a manner contrary to that specified in this RFT may be disqualified from the Tendering Process and, if disqualified, will be ineligible for consideration except where the Tenderer can clearly demonstrate (to the reasonable satisfaction of APIDT) that late lodgement of the Tender:

(a) resulted from mishandling of the Tender by APIDT or its advisors; or

(b) was due to a major incident,

and that the integrity of this RFT Process will not be compromised by accepting a Tender after the Closing Date & Time.

2.3.4 A failure of the Tenderer's delivery system does not constitute grounds for acceptance by APIDT of a late Tender. It is the Tenderer's obligation to ensure enough time is allowed to lodge the Tender before the Closing Date & Time.

2.3.5 APIDT's determination of the actual time that a Tender is lodged is final.

2.3.6 Subject to this section 2.3, all Tenders lodged after the Closing Date & Time will be recorded by APIDT and only opened for the purposes of identifying a business name and address of the Tenderer.

2.3.7 APIDT will inform a Tenderer whose Tender was lodged after the Closing Date & Time of its ineligibility for consideration.

3. Acceptance period of Tenders

All Tenders must remain valid and open for acceptance for a minimum of 60 days from the Closing Date & Time. This period may be extended by mutual agreement between APIDT and the Tenderer.

4. Application of these Tender Conditions

4.1 Participation in the Tendering Process is subject to compliance with these Tender Conditions.

4.2 All persons (whether or not they submit a Tender) having obtained or received this RFT may only use it, and the information contained in it, in compliance with these Tender Conditions.

- 4.3 All Tenderers are deemed to accept these Tender Conditions.
- 4.4 These Tender Conditions apply to:
- 4.4.1 the RFT and any other information given, received or made available in connection with the RFT, including any revisions or addenda;
 - 4.4.2 the Tendering Process; and
 - 4.4.3 any communications, presentations, meetings or negotiations relating to the RFT or the Tendering Process.

5. Status of RFT

- 5.1 This RFT is an invitation for Entities which:
- 5.1.1 were a member of an Applicable Registry on 11 May 2020 and have been continuously since that date; or
 - 5.1.2 are a body corporate registered in a jurisdiction in APNIC Service Region, (together, the **Eligibility Criteria**) to submit a proposal to acquire Transfer Addresses from the Address Space.
- 5.2 This RFT must not, of itself, be construed, interpreted, or relied upon, whether expressly or impliedly, as an offer capable of acceptance by any person, or as creating any form of contractual, promissory, restitutionary or other rights in favour of a recipient of the document or a Tenderer.
- 5.3 No binding contract (including a process contract) or other understanding (including any form of contractual, promissory, restitutionary or other rights) for the transfer of the Address Space will exist between APIDT and any Tenderer unless and until APIDT and the Tenderer have signed a formal written agreement in the form of the Contract.

6. Accuracy of RFT

- 6.1 While all due care has been taken in connection with the preparation of this RFT, APIDT makes no representations or warranties that the content in this RFT or any information communicated to or provided to Tenderers during the Tendering Process is, or will be, accurate, current or complete. APIDT and its officers, employees and advisors will not be liable with respect to any information communicated or provided which is not accurate, current or complete.
- 6.2 In particular, but without limitation, Tenderers should carefully review the Applicable Registry's policies and procedures for membership and transfers of IPv4 address space.
- 6.3 Compliance with the Applicable Registry's policies and procedures is entirely the Tenderer's responsibility and at the Tenderer's own risk.
- 6.4 If a Tenderer finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in the RFT or any other information provided by APIDT (other than minor clerical matters), the Tenderer must promptly notify APIDT in writing of such discrepancy, ambiguity, error or inconsistency to give APIDT an opportunity to consider what corrective action is necessary (if any).

- 6.5 Any actual discrepancy, ambiguity, error or inconsistency in the RFT or any other information provided by APIDT will, if possible, be corrected by APIDT and provided (or the proper information made available) to all Tenderers without attribution to the Tenderer that provided the notice.

7. Additions and amendments to RFT

- 7.1 APIDT reserves the right to revise, change any information in, or to issue addenda to, this RFT before the Closing Date & Time. APIDT and its officers, employees and advisors will not be liable in connection with either the exercise of, or failure to exercise, this right.
- 7.2 If APIDT exercises its right to change information under clause 7.1 of these Tender Conditions, it may seek amended Tenders from all Tenderers.

8. Representations

No representation made by or on behalf of APIDT in relation to this RFT (or its subject matter) will be binding on APIDT unless that representation is expressly incorporated into the Contract ultimately entered into between APIDT and a Tenderer.

9. Status of Tender

- 9.1 Each Tender constitutes an irrevocable offer by the Tenderer to APIDT to be transferred the Blocks of Address Space specified in the Tender on the terms and conditions of the Contract.
- 9.2 A Tender must not be conditional on:
- 9.2.1 approval of the Tenderer's board or any Related Entity of the Tenderer being obtained;
 - 9.2.2 the Tenderer conducting due diligence or any other form of enquiry or investigation;
 - 9.2.3 the Tenderer obtaining or securing any finance or funding to complete its obligations;
 - 9.2.4 the Tenderer (or any other party) obtaining any regulatory approval or consent;
 - 9.2.5 the Tenderer obtaining the consent or approval of any third party; or
 - 9.2.6 the Tenderer stating that it wishes to discuss or negotiate any commercial terms of the Contract.
- 9.3 APIDT may, in its absolute discretion, disregard any Tender that is, or is stated to be, subject to any one or more of the conditions detailed above (or any other condition).

10. Tender Documents

Tenderers are responsible for:

- 10.1.1 examining this RFT and any documents referenced or attached to this RFT and any other information made available by APIDT to Tenderers in connection with this RFT;
- 10.1.2 fully informing themselves in relation to all matters arising from this RFT, including all matters regarding APIDT's requirements for the transfer of the Address Space;
- 10.1.3 fully informing themselves in relation to the Applicable Registry's policies and procedures, in particular but without limitation, in relation to the Applicable Registry's policy on membership and transfers of IPv4 address space;
- 10.1.4 ensuring that their Tenders are accurate and complete;
- 10.1.5 making their own enquiries and assessing all risks regarding the RFT, and fully incorporating the impact of any known and unknown risks into their Tender; and
- 10.1.6 ensuring that they comply with all applicable laws in regards to the Tendering Process.

11. Transfer Contract

- 11.1 In its response to this RFT, Tenderers must include a copy of either:
 - 11.1.1 the Standard Transfer Agreement; or
 - 11.1.2 the Tenderer's preferred form of Contract,fully and properly executed by the Tenderer.
- 11.2 APIDT is prepared to contemplate the Tenderer's preferred form of Agreement if they do not agree to the form of the Standard Transfer Agreement. However, Tenderers should note that any provisions of an agreement which materially increase the risk to APIDT compared to the Standard Transfer Agreement may result in their Tender failing at that step of the evaluation.
- 11.3 APIDT will be entitled to assume that a Tenderer is able to and will in fact comply in all relevant respects with the Contract unless the Tenderer expressly states otherwise in a Non-Conformance Statement. Failure to notify APIDT of any non-compliance may result in a Tender being disregarded.
- 11.4 For the purposes of this clause 11.4 of these Tender Conditions:
 - 11.4.1 "complies" means that the Tenderer accepts the contractual provision in every respect (including the wording of the provision).
 - 11.4.2 "will comply" subject to conditions means that the Tenderer will comply with the relevant contractual provision subject to certain specified conditions.
 - 11.4.3 "will not comply" means that the Tenderer does not accept the contractual provision.

12. Evaluation

12.1 Evaluation Criteria

- 12.1.1 APIDT will take into account all factors it considers relevant in evaluating the Tender, including:
- (a) agreement to be bound to the Tender Conditions
 - (b) existing membership of an Applicable Registry or registration as a body corporate in a jurisdiction within the APNIC Service Region;
 - (c) compliance with the Applicable Registry's policy in relation to IPv4 transfers, including:
 - (i) whether the Tenderer holds a pre-approval of sufficient size to accommodate its current holding and the Transfer Addresses specified in its Tender; or
 - (ii) whether the Tender is accompanied by an application for pre-approval for such sufficient address space which is acceptable to the Applicable Registry;
 - (d) financial and operational capacity to complete payment and transfer of Transfer Addresses within 30 days;
 - (e) the Tender Price tendered for allocation of the Transfer Addresses;
 - (f) conformance with the Standard Transfer Agreement or, if an alternate Contract is proposed, the risk to APIDT of that Contract; and
 - (g) whether the Tenderer or any of its Related Entities were successful in a previous Stage. If a Tenderer's Tender is successful in one Stage of the process, it and its Related Entities will not be eligible to submit a Tender in a subsequent Stage and will be removed from consideration.

12.2 Evaluation of Tenders

- 12.2.1 Following the Closing Date & Time, the Evaluators will evaluate the Tenders received against the Evaluation Criteria.
- 12.2.2 Without limiting APIDT's rights in the RFT, APIDT may at any time during the Tendering Process choose to:
- (a) shortlist one or more Tenderers;
 - (b) commence or continue discussions with all or some Tenderers without shortlisting any Tenderers;
 - (c) accept one or more of the Tenders;
 - (d) accept any Tender, even if it is not the highest price;
 - (e) request Tenderers submit a best and final offer;
 - (f) negotiate with any Tenderer including with a preferred Tenderer on an exclusive basis;

- (g) accept a Tender which does not conform with the strict terms of the Tender Conditions;
 - (h) consider a Tender which was not submitted in accordance with these Tender Conditions;
 - (i) terminate the Tender Process at any time without making an award; or
 - (j) do anything else that APIDT determines in its absolute discretion.
- 12.2.3 If APIDT elects to shortlist any Tenderers, those shortlisted Tenderers may be required to provide additional information or attend an interview in response to this RFT.
- 12.2.4 Unless the Evaluation Criteria explicitly require, APIDT may, but is not in any way bound to, shortlist, select as successful, or accept the Tender that tenders the highest price.
- 12.2.5 Should APIDT choose to include a shortlisting stage in its evaluation process, APIDT is not, at any time, required to notify Tenderers or any other person or organisation interested in submitting a Tender.
- 12.2.6 A Tender will not be deemed to be unsuccessful until such time as the Tenderer is formally notified of that fact by APIDT. The commencement of negotiations by APIDT with one or more other Tenderers is not to be taken as an indication that any particular Tender has not been successful.
- 12.2.7 APIDT may seek clarification from and enter into discussions with any or all of the Tenderers in relation to their Tender. APIDT may use such information in interpreting the Tender and evaluating the cost and risk to APIDT before accepting the Tender. Failure to supply clarification to the satisfaction of APIDT may render the Tender liable to disqualification.
- 12.2.8 APIDT is under no obligation to seek clarification of anything in a Tender and APIDT reserves the right to disregard any clarification that APIDT considers to be unsolicited or otherwise impermissible in accordance with the rules set out in these Tender Conditions.
- 12.2.9 APIDT is under no obligation to appoint a successful Tenderer or Tenderers (as the case may be), or to enter into a contract with a successful Tenderer or any other person, if it is unable to identify a Tender that complies in all relevant respects with the requirements of APIDT, or if to do so would otherwise not be in the public interest. For the avoidance of any doubt, in these circumstances APIDT will be free to proceed via any alternative process.

13. Obligations to Notify

13.1 Notification of Changes

If, after a Tender has been lodged, there is any change to:

- (a) the Tenderer's corporate structure;
- (b) the Tenderer's ownership structure; or

- (c) the basis on which the Tenderer will have access to the necessary resources, expertise or corporate or financial backing necessary to complete the transfer of the Transfer Addresses,

the Tenderer must immediately notify APIDT of the details of such change including its likely impact on the information or assurances given in the Tender.

13.2 Notification of Errors

- 13.2.1 If, after a Tender has been submitted, the Tenderer becomes aware of an error in the Tender (including an error in pricing, but excluding clerical errors which would have no bearing on the evaluation of the Tender), the Tenderer must promptly notify APIDT of such error
- 13.2.2 APIDT may, in its absolute discretion, permit a Tenderer to correct an unintentional error in its Tender where that error becomes known or apparent after the Closing Time. In no event will any correction be permitted if APIDT considers that the correction would materially alter the substance of the Tender.

14. Illegible content, alteration and erasures

- 14.1 Incomplete Tenders may be disqualified or evaluated solely on the information contained in the Tender.
- 14.2 APIDT may disregard any content in a Tender that is illegible. APIDT is under no obligation whatsoever to seek any clarification from the Tenderer about the content of a Tender.

15. Probity and Requests for Clarification

- 15.1 Any questions, comments or queries about this RFT or the Tendering Process must be directed to the APIDT Contact Officer. Requests for information must be made no less than five (5) business days before the Closing Date & Time. APIDT may but need not respond to any questions during the five (5) business days before the Closing Date & Time.
- 15.2 The APIDT Contact Officer will not respond to any verbal request for clarification regarding the RFT.
- 15.3 Except where APIDT is of the opinion that issues raised apply only to an individual Tenderer, questions submitted and answers provided will be made available to all Tenderers (and publicly) without identifying the person or organisation having submitted the question. In all other cases, APIDT may deliver any written notification or response to a Tenderer by sending it to the address of the Tenderer (as notified to the APIDT Contact Officer).
- 15.4 A Tenderer may, by notifying the APIDT Contact Officer in writing, withdraw a question submitted in accordance with this clause 15 of the Tender Conditions in circumstances where the Tenderer does not wish APIDT to publish its response to the question to all Tenderers.
- 15.5 Communications (including promotional or advertising activities) with staff of APIDT, an Applicable Registry or the WIDE Project or consultants assisting APIDT with the Tendering Process are not permitted during the Tendering Process except as provided in clause 15.1 of these Tender Conditions, or otherwise with the prior written consent of the APIDT Contact Officer. Nothing in this clause 15 of these Tender Conditions is intended to prevent communications with staff of, or consultants to, APIDT, an Applicable Registry or the WIDE

Project to the extent that such communications do not relate to this RFT or the Tendering Process.

- 15.6 Tenderers must not seek or obtain the assistance of directors, executive council or other governing board members, employees, agents or direct contractors of APIDT, an Applicable Registry, the APNIC Foundation, WIDE Project, KPMG or Maddocks in the preparation of their Tenders. In addition to any other remedies available to it under law or contract, APIDT may, in its absolute discretion, immediately disqualify a Tenderer that it believes has sought or obtained such assistance.

16. Anti-Competitive Conduct

- 16.1 APIDT is committed to fairness in all its dealings with Tenderers. It is possible that people involved in contracting processes may become aware of, or have information indicating corrupt, fraudulent or unfair activity in relation to the Tendering Process or any resultant Contract. In these circumstances, please contact the APIDT Contact Officer.
- 16.2 Tenderers and their respective officers, employees, agents and advisers must not engage in any collusion, anti-competitive conduct or any other similar conduct with any other Tenderer or any other person in relation to:
- 16.2.1 the preparation or lodgement of their Tender;
 - 16.2.2 the evaluation and clarification of their Tender; and
 - 16.2.3 the conduct of negotiations with APIDT, in respect of this Tendering Process.
- 16.3 For the purposes of clause 16.2 of these Tender Conditions, collusion, anti-competitive conduct or any other similar conduct may include disclosure, exchange and clarification of information between Tenderers whether or not such information is confidential to APIDT or any other Tenderer or any person or organisation.
- 16.4 In addition to any other remedies available to it under law or contract, APIDT may, in its absolute discretion, immediately disqualify a Tenderer that it believes has engaged in any collusive, anti-competitive conduct or any other similar conduct in respect of this Tendering Process.
- 16.5 Tenderers must not otherwise engage in any activities that may be perceived as, or that may have the effect of, influencing the outcomes of the Tendering Process in any way.

17. Conflict of Interest

- 17.1 A Tenderer must not, and must ensure that its officers, employees, agents and advisers do not place themselves in a position that may or does give rise to actual, potential or perceived conflict of interest between the interests of APIDT and the Tenderer's interests during the Tendering Process.
- 17.2 The Form of Tender requires Tenderers to provide details of any interests, relationships or clients which may or do give rise to a conflict of interest in relation to the transfer of the Address Space under any contract that may result from this RFT.
- 17.3 If the Tenderer submits its Tender and a conflict of interest arises, or is likely to arise, which was not disclosed in the Tender, the Tenderer must notify APIDT immediately in writing of that conflict.

- 17.4 APIDT may disqualify a Tenderer from the Tendering Process if the Tenderer fails to notify APIDT of the conflict as required.

18. Licence to use Intellectual Property Rights

- 18.1 Persons obtaining or receiving this RFT and any other documents issued in relation to the Tendering Process may use the RFT and such documents only for the purpose of preparing a Tender.
- 18.2 Any intellectual property rights which may be incorporated in this RFT and any other documents provided to Tenderers by or on behalf of APIDT in connection with the Tendering Process are owned by (and will remain the property of) APIDT except to the extent expressly provided otherwise.
- 18.3 Upon submission in accordance with the requirements of these Tender Conditions, all Tenders become the property of APIDT. Tenderers will retain all ownership rights in any intellectual property contained in the Tender. The submission of a Tender does not transfer to APIDT any ownership interest in the Tenderer's intellectual property rights, or give APIDT any rights in relation to the Tender, except as expressly set out below.
- 18.4 Each Tenderer, by submission of their Tender, is deemed to have licensed APIDT to reproduce the whole, or any portion, of their Tender for the purposes of enabling APIDT to evaluate the Tender.

19. Disclosure of Tender Contents and Tender Information

Tenders will be treated as confidential by APIDT. APIDT will not disclose Tender contents and Tender information, except:

- 19.1.1 as required by law;
- 19.1.2 to external consultants and advisers of APIDT engaged to assist with the Tendering Process; or
- 19.1.3 following the execution of the Contract, the identities of all successful Tenderers in respect of a specified IPv4 block, including the aggregate purchase price for that IPv4 block .

20. Successful Tenderers

- 20.1 If a Tender is accepted by APIDT, the successful Tenderer will be notified in writing and may be requested to sign the Contract.
- 20.2 APIDT may, in its absolute discretion, decide not to enter into pre-contractual negotiations with a successful Tenderer.
- 20.3 A Tenderer is bound by its Tender and, if selected as a successful Tenderer, must enter into a Contract on the basis of the Tender without negotiation.

21. Tenderer Warranties

By submitting a Tender, a Tenderer warrants that:

- 21.1.1 in lodging its Tender it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of APIDT, its officers, employees, agents or advisers other than any statement, warranty or representation expressly contained in the RFT;
- 21.1.2 it did not use the improper assistance of APIDT employees or information unlawfully obtained from APIDT in compiling its Tender;
- 21.1.3 it is responsible for all costs and expenses related to the preparation and lodgement of its Tender, any subsequent negotiation, and any future process connected with or relating to the Tendering Process;
- 21.1.4 it otherwise accepts and will comply with the Tender Conditions; and
- 21.1.5 it will provide additional information in a timely manner as requested by APIDT to clarify any matters contained in the Tender.

22. Responsibility for Tendering Costs

- 22.1 The Tenderer's participation or involvement in any stage of the Tendering Process is at the Tenderer's sole risk, cost and expense. APIDT will not be responsible for, nor pay for, any expense or loss that may be incurred by Tenderers in relation to the preparation or lodgement of their Tenders.
- 22.2 In addition to clause 22.1 of these Tender Conditions, APIDT is not liable to the Tenderer for any costs on the basis of any contractual, promissory or restitutionary grounds whatsoever as a consequence of any matter relating to the Tenderer's participation in the Tendering Process, including without limitation, instances where:
 - 22.2.1 the Tenderer is not engaged to perform under any Contract; or
 - 22.2.2 APIDT exercises any right under this RFT or at law.

23. Complaints about Tendering Process

- 23.1 Any complaint about this RFT or the Tendering Process must be submitted to the APIDT Contact Officer in writing immediately upon the cause of the complaint arising or becoming known to the Tenderer. The written complaint must set out:
 - 23.1.1 the basis for the complaint (specifying the issues involved);
 - 23.1.2 how the subject of the complaint (and the specific issues) affect the person or organisation making the complaint;
 - 23.1.3 any relevant background information; and
 - 23.1.4 the outcome desired by the person or organisation making the complaint.
- 23.2 If the matter relates to the conduct of the APIDT Contact Officer, the complaint should also be brought to the attention of KPMG.

24. Governing Law

- 24.1 This RFT and the Tendering Process is governed by the law of the State of Queensland, Australia. By submitting a Tender the Tenderer irrevocably submits to the exclusive jurisdiction of the courts of Queensland, Australia in relation to any issue or action arising under or in relation to it.
- 24.2 Each Tenderer must comply with all relevant laws in preparing and lodging its Tender and in taking part in the Tendering Process.

Schedule 1 Standard Transfer Agreement



Maddocks

Lawyers
Collins Square, Tower Two
Level 25, 727 Collins Street
Melbourne VIC 3008
Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

Date:

Standard IPv4 Address Space Transfer Agreement

APIDTT Pty Ltd ACN 638 389 072
in its capacity as trustee for the
Asia Pacific Internet Development Trust

The Recipient named in item 1 of Schedule 1 as Recipient

Contents

| | | |
|------------|---|-----------|
| 1. | Definitions | 5 |
| 2. | Transfer of Address Space | 9 |
| 2.1 | Sale and Acquisition | 9 |
| 2.2 | Passing of Rights and Risk..... | 9 |
| 3. | Tender Price | 9 |
| 3.1 | Payment of Tender Price | 9 |
| 3.2 | Gross Up for taxes, bank fees and charges | 9 |
| 3.3 | Interest | 9 |
| 4. | Transfer Conditions | 9 |
| 5. | Completion | 10 |
| 5.1 | Place for Completion | 10 |
| 5.2 | Recipient's Obligations at Completion | 10 |
| 5.3 | APIDT's Obligations at Completion | 10 |
| 5.4 | Simultaneous actions at Completion | 10 |
| 5.5 | Failure by the Recipient to complete | 10 |
| 6. | Warranties | 10 |
| 6.1 | APIDT's Warranties | 10 |
| 6.2 | Recipient's Warranties | 11 |
| 7. | Indemnities | 11 |
| 7.1 | Indemnity for breach of Warranty | 11 |
| 7.2 | Indemnity by Recipient to APIDT for Third Party Claims..... | 11 |
| 7.3 | Benefit of Warranties and indemnities | 11 |
| 8. | Limitations on liability | 11 |
| 8.1 | Limitation of APIDT's liability to Recipient. | 11 |
| 8.2 | Time limits..... | 12 |
| 8.3 | Withdrawal of Warranty Claim | 12 |
| 8.4 | Quantum limits..... | 12 |
| 8.5 | Fair disclosure qualification | 13 |
| 8.6 | Actual knowledge qualification | 13 |
| 8.7 | Reduced liability for change in Law or standards | 13 |
| 8.8 | Reduced liability for other recovery | 13 |
| 8.9 | Reduced liability for acts before Completion | 13 |
| 8.10 | Reduced liability for voluntary acts after Completion | 14 |
| 8.11 | Reduced liability for failure to mitigate | 14 |
| 8.12 | No action against Released Representative | 14 |
| 9. | Confidential Information | 14 |
| 9.1 | Duty not to disclose or misuse Confidential Information | 14 |
| 9.2 | Preservation of Confidential Information | 15 |
| 9.3 | Return or destruction of Confidential Information | 15 |
| 9.4 | Further publicity | 15 |
| 10. | GST | 15 |
| 10.1 | GST Act | 15 |
| 10.2 | Exclusive of GST | 16 |
| 10.3 | Recipient must pay | 16 |
| 10.4 | Tax Invoice | 16 |
| 11. | Effect of termination | 16 |
| 11.1 | Surviving clauses and rights | 16 |



| | | |
|-------------------|---|-----------|
| 11.2 | Dealing with Confidential Information | 16 |
| 12. | Notices | 16 |
| 12.1 | Delivery of notice | 16 |
| 12.2 | Particulars for delivery | 17 |
| 12.3 | Time of service | 17 |
| 13. | Governing law | 17 |
| 14. | Interpretation | 17 |
| 14.1 | Words and headings | 17 |
| 14.2 | Specific references | 18 |
| 15. | General | 18 |
| 15.1 | Variation | 18 |
| 15.2 | Counterparts | 19 |
| 15.3 | Entire agreement and no reliance | 19 |
| 15.4 | Liability | 19 |
| 15.5 | Severability | 19 |
| 15.6 | Legal costs and other expenses | 19 |
| 15.7 | Assignment | 19 |
| 15.8 | Time of the essence | 19 |
| 15.9 | Waiver | 20 |
| 15.10 | Further assurance | 20 |
| 15.11 | No merger | 20 |
| 15.12 | Business Day | 20 |
| Schedule 1 | Agreement details | 21 |
| Schedule 2 | APIDT's Warranties | 22 |
| Schedule 3 | Recipient Warranties | 24 |

The Parties Agree

1. Definitions

1.1 In this document unless expressed or implied to the contrary:

Address Rights means all of the right and interest in the Transfer Addresses including, without limitation, the right to:

- (a) use the Transfer Addresses as IPv4 addresses (including the right to assign the Transfer Addresses to host devices and network interfaces for routing the public Internet), subject to the Registry Policies or the policies of ICANN;
- (b) register the Transfer Addresses in the APNIC registration database, subject to the Registry Policies;
- (c) assign all or part of the Transfer Addresses to a Third Party, subject to the Registry Policies or the policies of any other applicable RIR; and
- (d) enforce these rights against APIDT and other persons.

Address Space means public unicast IP version 4 (IPv4) address ranges specified in paragraph A of the Background.

Agreement means this Standard IPv4 Address Space Transfer Agreement, including the Schedules.

AEST means Australian Eastern Standard Time (UTC + 10 hours).

APIDT Warranty means each warranty set out in Schedule 2.

APNIC means the Asia Pacific Network Information Centre of 6 Cordelia Street, South Brisbane, Queensland, Australia, 4101.

APNIC NIR means a national internet registry recognised by APNIC.

Applicable Registry means APNIC or an APNIC NIR as the case may be.

Authority means any:

- (a) government, government department, government agency or government authority;
- (b) governmental, semi-governmental, municipal, judicial, quasi-judicial, administrative or fiscal entity or person carrying out any statutory authority or function; or
- (c) other entity or person (whether autonomous or not) having powers or jurisdiction under:
 - (i) any statute, regulation, ordinance, by-law, order or proclamation, or the common law; or
 - (ii) the listing rules of any recognised stock or securities exchange.

Business Day means Monday to Friday excluding public holidays in Brisbane, Queensland, Australia.

Claim means any claim, allegation, cause of action, proceeding, demand, debt, liability, obligation, cost or expense of any nature however it arises and whether it is present or future, fixed or unascertained, actual or contingent (whether or not the facts, matters or circumstances giving rise to that claim are known to that person or to any other person at the date of this Agreement) and whether at law, in equity, under statute or otherwise.

Claim Notice means, in respect of a Claim, a notice which:

- (a) describes in reasonable detail the fact, matter, event or circumstance giving rise to the Claim;
- (b) states the basis on which that fact, matter, event or circumstance may give rise to the Claim;
- (c) (to the extent possible) specifies an estimate of the Loss arising from the Claim; and
- (d) may specify anything else the Recipient considers necessary.

Completion means the performance by each party of their respective obligations under clause 4 on the Completion Date.

Completion Date means:

- (a) the date 30 days after the date this agreement is executed by APIDT and returned to the Recipient; or
- (b) such earlier date nominated by the Recipient to APIDT in writing, being not less than 5 Business Days after the date the written nomination is received by APIDT; or
- (c) such other date agreed in writing by APIDT and the Recipient.

Confidential Information means:

- (a) all trade secrets and all financial, accounting, marketing and technical information, customer and supply lists, pricing information, ideas, concepts, formulae, recipes, know-how, technology, operating procedures, processes, knowledge and other information belonging to, used by or relating to APIDT in respect of the Business which is not in the public domain;
- (b) all notes and reports incorporating the rights from information referred to in paragraph (a);
- (c) all copies of the information, notes and reports referred to in paragraphs (a) and (b).

Consequential Loss means any loss or damage which does not naturally or directly result in the ordinary course of events from the breach, action or inaction in question, whether or not a party has been advised of or is aware of that loss or damage, including any loss of revenue, profit, business, opportunity, data, goodwill or future reputation, any failure to realise anticipated savings, any downtime costs, and any damage to credit rating.

Corporations Act means the *Corporations Act 2001* (Cth).

GST has the same meaning given to that term in the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time.

ICANN means the Internet Corporation for Assigned Names and Numbers.

Immediately Available Funds means cash, unendorsed bank cheque or telegraphic or other electronic means of transfer of cleared funds into a bank account nominated in advance by APIDT.

Interest Rate means the Westpac Banking Corporation Ltd (**Westpac**) 30 day business lending rate as published on the Westpac website on the Completion Date.

Law includes:

- (a) any Australian or foreign law, statute, regulation, ordinance, by-law, order or proclamation, and the common law; and
- (b) any authorisation, ruling, judgment, order, decree or other requirement of any Authority.

Loss includes any damage, punitive damages, liability, duty, loss, charge, cost or expense, interest, penalty, fine and tax, however it arises, and whether it is present or future, fixed or unascertained, actual or contingent (whether or not the events, matters or circumstances giving rise to it are known to that person or to any other person at the Signing Date); or at law, in equity, under statute or otherwise. A **Loss** in connection with any event, matter or circumstance includes all expenses of consultants, and legal expenses on a full indemnity basis, incurred in connection with investigating, disputing, defending or settling any Claim relating to that event, matter or circumstance. For any Warranty Claim, **Loss** includes an amount that would be necessary to put the claimant in the same position as if the relevant Warranty had been true and correct.

Recipient Warranty means each warranty set out in Schedule 3.

Registry Policies means the policies of APNIC set out at <https://www.apnic.net/community/policy/resources> or the policies of any other applicable RIR or APNIC NIR.

Related Body Corporate means the relationship between a body corporate (first entity) and another body corporate (second entity) if:

- (a) the first entity is a holding company of the second entity;
- (b) the first entity is a subsidiary of the second entity; or
- (c) the first entity is a subsidiary of the holding company of the second entity.

Related Entity of a corporation means:

- (a) a Related Body Corporate of that corporation; and
- (b) a trustee of any unit trust, where that corporation or its Related Body Corporate, directly or indirectly:
 - (i) controls the right to appoint the trustee;
 - (ii) is in a position to control the casting of more than half of the maximum number of votes that may be cast at a meeting of the unitholders; or
 - (iii) holds or is in a position to control the disposal of more than half of the issued units of the trust.

Representative of a person means an officer, employee, contractor, representative, agent, auditor, adviser, partner or consultant of that person or of that person's Related Entity.

RIR means APNIC and any other relevant regional internet registry.

RFT or **Request for Tender** has the meaning give to that term in recital A of the Background.

RFT Documentation means the documentation and information provided to the Recipient as part of the RFT process.

Schedule means a schedule to this Agreement.

Security Interest means an interest in or right over property to secure the performance of an obligation including an obligation to pay money.

Signing Date means the date on which the recipient submitted its Tender to APIDT.

Tax means any tax (including income tax, withholding tax, capital gains tax, pay as you go, pay as you earn, GST, fringe benefits tax, customs and other import or export duties, sales tax and payroll tax), stamp, transaction or registration duty, excise, value added tax, prescribed levy, charge, impost, fee, deduction, compulsory loan or withholding, that is assessed, levied, imposed or collected by any Authority and includes any interest, fine, penalty, charge, fee or any other amount imposed in respect of any of them.

Tender means the Recipient's tender in response to APIDT's RFT.

Tender Price means the price specified in the Recipient's Tender specified in item 3 of Schedule 1.

Third Party means any person that is not a party to this Agreement or APIDT's Related Entities.

Third Party Claim means any Claim or potential Claim by a Third Party against the Recipient under this Agreement which may give rise to a Warranty Claim or the use by the Recipient of the Transfer Addresses, infringes that Third Party's Address Rights.

Third Party Interest means:

- (a) a Security Interest; and
- (b) any other charge, debenture, hypothecation, lien, mortgage, pledge or other encumbrance securing any obligation of any person.

Transfer Addresses means the Address Space specified in item 2 of Schedule 1.

Transfer Conditions means:

- (a) the APNIC conditions of transfer at <https://www.apnic.net/manage-ip/manage-resources/transfer-resources/#conditions>; or
- (b) the conditions of transfer of the applicable APNIC NIR (if any).

Trust means the Asia Pacific Internet Development Trust.

Warranty Claim means a Claim by the Recipient for breach of a warranty, or under the indemnity in clause 7.1 for breach of a warranty.

2. Transfer of Address Space

2.1 Sale and Acquisition

APIDT agrees to transfer, and the Recipient agrees to acquire, free from all Third Party Interests, the Address Rights in respect of the Transfer Addresses for the Tender Price on the terms and conditions of this Agreement.

2.2 Passing of Rights and Risk

The rights comprised in the Address Rights, and all risk arising from the Address Rights:

2.2.1 remains solely with APIDT until Completion; and

2.2.2 pass to the Recipient at and from Completion.

3. Tender Price

3.1 Payment of Tender Price

The Recipient must pay the Tender Price to APIDT in the manner described in clause 5.2.

3.2 Gross Up for taxes, bank fees and charges

3.2.1 If a:

- (a) Tax, other than an Australian income tax or GST liability of APIDT (but without limitation to clause 10); or
- (b) fee or charge including a bank or transfer fee or charge, but not a fee or charge by APIDT's own bank,

on or in relation to the payment of the Tender Price by the Recipient to APIDT results in final amount received by APIDT to be less than the Tender Price,

3.2.2 then the Recipient must increase the payment by the amount necessary to ensure that the amount received and retained by APIDT after payment of that Tax, fee or charge is the amount of the Tender Price.

3.3 Interest

If the Recipient does not pay the Tender Price on the Completion Date to APIDT then, without limitation to its other rights, APIDT may elect to charge the Recipient interest on the Tender Price, calculated daily at the Interest Rate, from the Completion Date until the Recipient pays the Tender Price to APIDT.

4. Transfer Conditions

4.1 The Recipient acknowledges and agrees that the acquisition of the Address Rights is subject to, and the Recipient must comply with, the following:

4.1.1 membership terms and agreement of the Applicable Registry;

4.1.2 Registry Policies; and

4.1.3 Transfer Conditions.

4.2 The compliance with the requirements of clause 4.1 is solely an obligation of the Recipient and solely at the Recipient's risk.

5. Completion

5.1 Place for Completion

Completion will take place at noon (AEST) on the Completion Date or at such other time that APIDT and the Recipient agrees in writing.

5.2 Recipient's Obligations at Completion

At Completion, the Recipient must:

5.2.1 pay to APIDT the Tender Price in Immediately Available Funds; and

5.2.2 deliver all other documentation and take all actions reasonably necessary to give full effect to this Agreement as reasonably requested by APIDT.

5.3 APIDT's Obligations at Completion

At Completion, subject to completion by the Recipient with its obligations under clause 5.2, APIDT must initiate and take all reasonable steps to facilitate the transfer of the Address Rights to the Recipient in accordance with the Registry Policies.

5.4 Simultaneous actions at Completion

In respect of Completion:

5.4.1 the obligations of the parties under this Agreement are interdependent; and

5.4.2 unless otherwise stated, all actions required to be performed will be taken to have occurred simultaneously on the Completion Date.

5.5 Failure by the Recipient to complete

If the Recipient does not Complete, other than as a result of default by APIDT, APIDT may choose either to seek specific performance or immediately terminate this Agreement by giving notice to the Recipient. In either case, APIDT may seek damages from the Recipient for the default, which may include the difference in the Tender Price and any subsequent consideration received by APIDT for the transfer of the Address Rights to the Transfer Addresses.

6. Warranties

6.1 APIDT's Warranties

6.1.1 APIDT represents, warrants and undertakes to the Recipient that each of APIDT Warranties is true and correct as at the date of this Agreement and on the Completion Date.

6.1.2 To the extent permitted by law, the Recipient acknowledges that, in entering into this Agreement and in proceeding to Completion, the Recipient has not relied on

and will not rely on any representation or warranty (apart from APIDT's Warranties), that are express or implied, written, oral, collateral, statutory or otherwise, as to the value or uses of the Address Rights or Transfer Addresses from any person.

6.2 Recipient's Warranties

- 6.2.1 The Recipient represents, warrants and undertakes to APIDT that at the date of this Agreement and the Completion Date that each of the Recipient Warranties is true and correct and not misleading or deceptive.
- 6.2.2 If a Recipient Warranty is expressed to be given at a particular time, then that warranty is correct and not misleading or deceptive, as at that time.

7. Indemnities

7.1 Indemnity for breach of Warranty

Subject to clause 8, the Recipient indemnifies APIDT and its Representatives (the **Indemnified**) in relation to, and must pay to APIDT on demand after Completion the amount of all Loss suffered or incurred by the Indemnified arising out of or in connection with any Recipient Warranty being untrue or incorrect at the time it was given.

7.2 Indemnity by Recipient to APIDT for Third Party Claims

- 7.2.1 The Recipient indemnifies the Indemnified from and against all Loss arising out of or in connection with a Third Party Claim.
- 7.2.2 The Recipient must provide prompt written notice to APIDT upon it becoming aware of any Third Party Claim or any facts or circumstances which may give rise to a Third Party Claim.

7.3 Benefit of Warranties and indemnities

The Recipient's rights to make a Warranty Claim or other Claim in connection with this Agreement are personal to the Recipient and may not be assigned to any other person.

8. Limitations on liability

8.1 Limitation of APIDT's liability to Recipient.

- 8.1.1 APIDT's liability to the Recipient for any and all Claims arising under or in relation to this Agreement, the RFT, the transfer of the Address Rights in respect of the Transfer Addresses and the failure of any transfer for any reason is limited to:
- (a) the amount of the Tender Price received by APIDT from the Recipient; and
 - (b) the value of the cash and cash like assets held by the APIDT as part of the assets of the Trust,
- as at the date APIDT's liability to the Recipient is finally determined.
- 8.1.2 Without limitation to the generality of clause 8.1.1, APIDT is not liable to the Recipient for any Consequential Loss.

8.2 Time limits

Without limitation to clause 8.1:

8.2.1 APIDT is not liable for a Claim specified below unless the Recipient gives APIDT a Claim Notice on or before the corresponding date below.

| Type of Claim | Latest date that the Recipient may give Claim Notice |
|------------------|--|
| Warranty Claim | 6 months after the Completion Date. |
| All other Claims | 12 months after the Completion Date. |

8.2.2 After Completion, if the Recipient becomes aware of any fact, event, matter, circumstance or information that could reasonably result in the Recipient making a Claim against APIDT under this Agreement, the Recipient must use reasonable endeavours to give APIDT a Claim Notice within 20 Business Days after it becomes aware of it.

8.3 Withdrawal of Warranty Claim

APIDT is not liable for a Warranty Claim, and the Warranty Claim is taken to be withdrawn, unless one of the events described below occurs:

- 8.3.1 that Warranty Claim is satisfied or settled within 3 months after the Recipient gives a notice under clause 8.2; or
- 8.3.2 the Recipient serves legal proceedings against APIDT for that Warranty Claim within 3 months after the date that the Recipient gives a Claim Notice.

8.4 Quantum limits

8.4.1 The Recipient must not make, and APIDT is not liable to pay any Claim:

- (a) for less than the individual threshold amount of 5% of the Tender Price or \$100,000, whichever is the greater; and
- (b) unless the aggregate amount of all Claims is or exceeds \$200,000, in which case the Recipient may only claim the amount in excess of \$100,000.

(each a **Qualifying Claim**).

8.4.2 For the purpose of clause 8.4.1:

- (a) multiple Claims arising out of separate Warranty Events will not be treated as one Claim, even if each Warranty Event may result in a breach of the same Warranty; and
- (b) multiple Claims of the same or similar nature arising out of the same or similar Warranty Event will be treated as one Claim.

8.5 Fair disclosure qualification

The APIDT Warranties are qualified by, and APIDT is not liable for, any Warranty Claim in respect of any fact, event, matter, circumstance or information that is fairly disclosed in:

- 8.5.1 this Agreement;
- 8.5.2 the RFT Documentation; or
- 8.5.3 the publicly available information of which the Recipient would have been aware if it had conducted these searches on the dates listed below:

| Authority or register to search | Dates of conducting search |
|---------------------------------|--|
| APIDT website | 1 Business Day before the Signing Date |

8.6 Actual knowledge qualification

- 8.6.1 The APIDT Warranties are qualified by, and APIDT is not liable for a Warranty Claim in respect of, any fact, event, matter, circumstance or information that the Recipient is actually aware of as at the Signing Date.
- 8.6.2 The Recipient is taken to be aware of a particular fact, event, matter, circumstance or information under clause 8.6.1 if a Representative of the Recipient is aware of it as at the Signing Date.

8.7 Reduced liability for change in Law or standards

APIDT’s liability for any Warranty Claim is reduced to the extent that it arises from or is attributable to the enactment or amendment of any Law, or change in the administration or interpretation of any Law, after the Signing Date (even if the enactment, amendment or change has retrospective effect).

8.8 Reduced liability for other recovery

APIDT’s liability for any Warranty Claim is reduced to the extent that the Loss giving rise to that Warranty Claim is:

- 8.8.1 recovered by the Recipient under another Claim or from an insurer; or
- 8.8.2 otherwise compensated without any cost to the Recipient.

8.9 Reduced liability for acts before Completion

APIDT’s liability for any Warranty Claim is reduced to the extent that the Loss giving rise to that Warranty Claim arises from an act or omission by or on behalf of APIDT before Completion that was done or made:

- 8.9.1 with the Recipient’s consent; or
- 8.9.2 at the Recipient’s direction or instruction.

8.10 Reduced liability for voluntary acts after Completion

APIDT's liability for any Warranty Claim is reduced to the extent that it is a direct result of a voluntary transaction, action or omission of the Recipient after Completion, other than a transaction, action or omission which is:

- 8.10.1 under a legally binding commitment created on or before Completion; or
- 8.10.2 in the ordinary course of the Business; or
- 8.10.3 reasonably required to comply with any Law.

8.11 Reduced liability for failure to mitigate

APIDT's liability for any Claim is reduced to the extent that the Loss giving rise to that Warranty Claim arises from, or is increased as a result of, a failure by the Recipient to take reasonable steps to mitigate the Loss.

8.12 No action against Released Representative

- 8.12.1 **Released Representative** means a current or former Representative of APIDT.
- 8.12.2 The Recipient waives, and must procure that its Related Entities waive, all rights and Claims that they may have against each Released Representative, arising directly or indirectly in connection with this Agreement or the acquisition, except to the extent that they arise out of the fraud or wilful misconduct of that Released Representative.
- 8.12.3 The parties acknowledge and agree that:
 - (a) APIDT sought and obtained this waiver as agent for and on behalf of the Released Representatives and holds the benefit of this clause as trustee for them;
 - (b) this clause may be enforced by APIDT on behalf and for the benefit of each Released Representative; and
 - (c) each Released Representative may plead this clause in answer to any Claim made against him or her by the Recipient or its Related Entity.

9. Confidential Information

9.1 Duty not to disclose or misuse Confidential Information

- 9.1.1 Each party may disclose Confidential Information only:
 - (a) for the purposes of performing its obligations under this Agreement;
 - (b) as required by law; or
 - (c) as permitted or required in writing by the other party.
- 9.1.2 A party may disclose the terms of this Agreement to:
 - (a) the officers, employees and professional advisers of that party and its Related Entities; or

(b) a financial institution in order to arrange borrowing for the Tender Price, but it must use its best endeavours to ensure all matters disclosed are kept confidential.

9.1.3 The parties may only use Confidential Information to perform their obligations under this Agreement.

9.2 Preservation of Confidential Information

Each party must take whatever measures are reasonably necessary to prevent the disclosure or misuse of Confidential Information, including:

9.2.1 complying with all security measures established to safeguard Confidential Information from unauthorised access or use; and

9.2.2 keeping Confidential Information under the party's control.

9.3 Return or destruction of Confidential Information

A party must immediately on termination of this Agreement or on the other party's written request at any other time:

9.3.1 return to the other party Confidential Information provided to or obtained or accessed by the party under this Agreement; or

9.3.2 destroy Confidential Information so that it is incapable of being revived; and

9.3.3 provide a statutory declaration to the other party that all Confidential Information has been returned or destroyed in accordance with this clause.

9.4 Further publicity

9.4.1 Subject to clause 9.1 of this Agreement, no party may disclose the provisions of this Agreement or the terms on which the Transfer Addresses are sold unless the parties to this Agreement have first consented in writing.

9.4.2 The Recipient acknowledges and agrees that:

(a) it will not made any announcement or press release in respect of its successful tender or its acquisition of the Transfer Addresses until Completion or otherwise APIDT has first consented in writing consent the party may withhold in its sole discretion; and

(b) APIDT may make an announcement or press release in relation to the completion of each stage of the RFT Process, including an aggregated reference to the total amount realised from the process even if the Tender Price may be derived from that information.

10. GST

10.1 GST Act

In this clause words that are defined in the Australian GST Law have the same meaning as their definition in that Act.

10.2 Exclusive of GST

Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of Australian GST.

10.3 Recipient must pay

If Australian GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 10.4 the recipient will pay to the supplier an amount equal to the Australian GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

Note: GST is only likely to be payable if the Recipient is an enterprise carried on in Australia.

10.4 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the Australian GST payable under clause 10.3.

11. Effect of termination**11.1 Surviving clauses and rights**

If this Agreement is terminated, then it has no further effect and no party is liable to any other party under this Agreement:

- 11.1.1 except that each party retains its rights against any other party in connection with any Loss or Claim that arose before termination;
- 11.1.2 except under the following which survive termination: clauses 10, 11, 13, 14 and 15 (inclusive); and
- 11.1.3 except that each party retains any other rights, powers or remedies provided at law or in equity.

11.2 Dealing with Confidential Information

If requested by APIDT, the Recipient must within 20 Business Days after termination of this Agreement:

- 11.2.1 return or destroy (at the Recipient's option) all Confidential Information disclosed to the Recipient and its Representatives as part of the acquisition; and
- 11.2.2 certify that all Confidential Information has been returned or destroyed.

12. Notices**12.1 Delivery of notice**

- 12.1.1 A notice or other communication required or permitted to be given to a party under this Agreement must be in writing and may be delivered:
 - (a) personally to the party;
 - (b) by leaving it at the party's address;

(c) by posting it by express post addressed to the party at the party's address;
or

(d) by electronic mail to the party's email address,

in each case, as specified in the notice details of that party.

12.1.2 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

12.2 Particulars for delivery

12.2.1 The notice details of each party are set out in on page 1 of this Agreement under the heading 'Parties' (or as notified by a party to the other parties in accordance with this clause).

12.2.2 Any party may change its notice details by giving notice to the other parties.

12.3 Time of service

A notice or other communication is deemed delivered:

12.3.1 if delivered personally or left at the person's address, upon delivery;

12.3.2 if posted within Australia to an Australian address using express post, 2 Business Days after posting;

12.3.3 if posted from a place to an address in a different country, 10 Business Days after posting;

12.3.4 if delivered by electronic mail, subject to clause 12.3.5, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; and

12.3.5 if received after 5.00pm in the place it is received, or on a day which is not a business day in the place it is received, at 9.00am on the next business day.

13. Governing law

This Agreement is governed by the law applying in Queensland, Australia and the parties submit to the non-exclusive jurisdiction of the courts of Queensland, Australia and waives any right to object to proceedings being brought in those courts.

14. Interpretation

14.1 Words and headings

In this Agreement, unless expressed to the contrary:

14.1.1 words denoting the singular include the plural and vice versa;

14.1.2 the word 'includes' in any form is not a word of limitation;

- 14.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 14.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Agreement; and
- 14.1.5 no rule of construction applies to the disadvantage of the party preparing this Agreement on the basis that it prepared or put forward this Agreement or any part of it.

14.2 Specific references

In this Agreement, unless expressed to the contrary, a reference to:

- 14.2.1 a gender includes all other genders;
- 14.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 14.2.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 14.2.4 writing includes writing in digital form;
- 14.2.5 'this Agreement' is to this Agreement as amended from time to time;
- 14.2.6 '\$', 'dollars', 'USD\$' or 'USD' is a reference to United States Dollars;
- 14.2.7 a time or date is a reference to a time or date in AEST;
- 14.2.8 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Agreement;
- 14.2.9 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 14.2.10 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 14.2.11 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- 14.2.12 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

15. General

15.1 Variation

This Agreement may only be varied by a document executed by the parties.

15.2 Counterparts

This Agreement may be executed in counterparts, all of which taken together constitute one document.

15.3 Entire agreement and no reliance

15.3.1 This Agreement:

- (a) constitutes the entire agreement between the parties; and
- (b) supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation imposed, given or made by a party (or an agent of a party) prior to entering into this Agreement.

15.3.2 The parties acknowledge that in entering into this Agreement each party has not relied on any representations made by the other party (or its agents or employees) other than matters expressly set out in this Agreement.

15.4 Liability

If a party consists of 2 or more people or entities, an obligation of that party binds each of them jointly and severally.

15.5 Severability

15.5.1 Any provision of this Agreement that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

15.5.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Agreement that is unlawful or unenforceable will be severed from this Agreement and the remaining provisions continue in force.

15.6 Legal costs and other expenses

Unless otherwise expressed in this Agreement, each party will bear its own costs and expenses in respect of the negotiation, preparation, execution, delivery, stamping and registration of this Agreement.

15.7 Assignment

Before the Completion Date, a party must not:

- (a) sell, transfer, delegate, assign, licence; or
- (b) mortgage, charge or otherwise encumber

any right under this document to any person (**Proposed Assignee**), or permit a Proposed Assignee to assume any obligation under this document, without the prior written consent of the other parties to this document.

15.8 Time of the essence

Time is of the essence as regards all dates, periods of time and times specified in this document.

15.9 Waiver

The failure of a party at any time to insist on performance of any provision of this Agreement is not a waiver of the party's right at any later time to insist on performance of that or any other provision of this Agreement.

15.10 Further assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

15.11 No merger

The warranties, undertakings, agreements and continuing obligations in this Agreement do not merge on completion of the transactions contemplated by this Agreement.

15.12 Business Day

If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.



Schedule 1 Agreement details

| Item | Details | Description |
|------|---------------------------|--|
| 1. | Recipient | Name: Address: Email: Contact: Short name: |
| 2. | Transfer Addresses | |
| 3. | Tender Price | |

- 2.5 Each Transfer Address is unique, valid, unused for public routing on the Internet and a properly functioning address, currently routable for all purposes.
- 2.6 None of the Transfer Addresses are listed on or in any relevant IPv4 blacklists as being associated with SPAM, unsolicited electronic mail or other unsolicited or unwelcome electronic messages, or the distribution of malware, spyware, virus, or other destructive or disruptive software or computer code.
3. **Trustee of a Trust**
- 3.1 APIDT:
- 3.1.1 it is the only trustee of the Trust and it is not aware of any action to remove it as trustee of the Trust;
- 3.1.2 it has power under the deed constituting the Trust (in this clause, the **Trust Deed**) and has obtained all necessary approvals, consents and authorisations to enter into and perform its obligations under this Agreement;
- 3.1.3 it is not in default under the Trust Deed, the Trust has not been terminated and no vesting of the Trust's property has occurred and it is not aware of any action proposed to terminate or vest the property of the Trust;
- 3.1.4 the Trust's property has not been resettled, set aside or transferred to any other trust;
- 3.1.5 the entry into and the performance of its obligations under this Agreement is for the benefit of the beneficiaries of the Trust; and
- 3.1.6 it has a right to be indemnified fully out of the Trust's assets in respect of all of the obligations and liabilities incurred by it, or which may be incurred by it, under this Agreement and its lien over the Trust's property retains its priority over the rights and interests of the Trust's beneficiaries to the extent provided by any relevant law.
- 3.2 No petition has been presented, no order has been made and no resolution has been passed for the winding up of APIDT or for the appointment of a liquidator or provisional liquidator of APIDT.
- 3.3 APIDT has not obtained, or taken any step to obtain, protection from its creditors under any applicable legislation or entered into, or proposed to enter into, any other arrangement with its creditors.
- 3.4 APIDT's obligations under this Agreement are enforceable in accordance with its terms.



Signing Page

Executed by the parties.

Executed by **APIDTT Pty Ltd ACN 638 389 072**)
in its capacity as trustee for the)
Asia Pacific Internet Development Trust:

.....
Signature of Director

.....
Signature of Director/Company Secretary

.....
Print full name

.....
Print full name

Executed by **##insert**)
)

.....
Signature of Director

.....
Signature of Director/Company Secretary

.....
Print full name

.....
Print full name

Schedule 2 Form of Tender

APIDT Stage 1 Tender Response Form

Tenderers must submit this completed Request for Tender Response Form, including its Attachments by the Closing Date & Time.

In order to lodge a complete Tender the Tenderer must complete and submit all three parts of the Tender Response Form in PDF format.

Tenders must be submitted by email as follows:

Email address: au-fm-apidt-tender@kpmg.com.au
 Email Subject: APIDT Request for Tender – Stage 1

See clause 2.2 of the RFT for information on submission requirements.

Please include additional information where it would add clarity and value to the APIDT in assessing your tender.

| Part 1 - Tenderer's Details | | |
|-----------------------------|--|--|
| 1. | Name of Tenderer: | |
| 2. | Tenderer entity type <i>(Include legislation under which the entity is incorporated, where applicable. If trustee, include a description of the trustee, trust type and trust details including name and ABN. Note: Should APIDT decide to accept such a Tender, the Transfer Agreement may contain additional clauses to protect APIDT's interests).</i> | |
| 3. | Business Registration Number (if applicable): | |
| 4. | Registered business address of tenderer: | |

| | | |
|----|--|--|
| 5. | <p>Preferred contact address for notices:</p> <p><i>(to be included in any resultant IPv4 Address Space Transfer Agreement entered into with APIDT)</i></p> | <p>Title:</p> <p>Address:</p> <p>Fax:</p> <p>Email:</p> |
| 6. | <p>Tenderer's nominated primary and secondary contact people:</p> | <p><i>Primary contact</i></p> <p>Name:</p> <p>Position:</p> <p>Phone:</p> <p>Email:</p> <hr/> <p><i>Secondary contact:</i></p> <p>Name:</p> <p>Position:</p> <p>Phone:</p> <p>Email:</p> |
| 7. | <p>Confirmation that Tenderer agrees:</p> <ul style="list-style-type: none"> i. to be bound by the Conditions of Tender; and ii. that APIDT's decision with regard to the Tender Process is final and not subject to review <p><i>Tenderer to insert 'Yes' or 'No' in respect of each subquestion in the 'Response' cell</i></p> | |
| 8. | <p>The Tenderer confirms that the offer proposed by the Tenderer in its Tender Response Form will remain valid and open for acceptance for a minimum period of 60 days from the Closing Date & Time.</p> <p><i>Tenderer to insert 'Yes' or 'No' in the 'Response' cell</i></p> | |

| Conflicts of Interest | |
|-----------------------|---|
| 9. | <p>The Tenderer confirms that there are no circumstances or relationships which constitute or may constitute a conflict or potential conflict of interest in relation to this RFT or the Tenderer's obligations under any contract resulting from this RFT other than as specified in this Tender Form:</p> |

Part 2 of the Tender Response Form relates to the Tenderer's eligibility to purchase the Address right based on its compliance against Applicable Registry policies. When completing Part 2 – Eligibility Requirements of the Tender Response Form Tenderers should have regard to clause 10 and Schedule 1 of the RFT.

| Part 2 – Eligibility Requirements | | |
|--|---|--|
| Applicable Registry Membership | | |
| 10. | <p>As at 11 May 2020, and at the time of Tender, is the Tenderer a member of an Applicable Registry?</p> <p><i>If YES insert this response, and the name of the Applicable Registry the Tender is a member of and the Tenderer's membership number in the 'Response' cell and progress to item 12.</i></p> <p><i>If NO insert 'Not applicable' in the Response cell and progress to Item 11.</i></p> | |
| 11. | <p>Is the Tenderer an organisation incorporated in a jurisdiction within the APNIC Service Region?</p> <p><i>Note: for the purposes of this Tender, 'APNIC Service Region' means the 56 jurisdictions throughout Asia and Oceania, listed at <https://www.apnic.net/about-apnic/corporate-documents/documents/corporate/apnic-service-region/>.</i></p> | |
| Compliance with Applicable Registry IPv4 Transfer Policy | | |
| 12. | <p>Does the Tenderer hold a pre-approval for address space that will accommodate its current holdings and the Transfer Addresses specified in item 15 of its Tender?</p> <p><i>If YES attach a copy of the confirmation of the pre-approval and progress to item 13.</i></p> <p><i>If NO insert 'Not applicable' in the Response cell and progress to Item 13</i></p> | |
| 13. | <p>Has the Tenderer applied for pre-approval for address space sufficient to accommodate its current holdings and the Transfer Addresses specified in item 15 of its Tender?</p> <p><i>If YES, the Tenderer should attach a copy of this application to the Tender Response Form and lodge this with the Tender.</i></p> <p><i>If NO insert this answer' in the 'Response' cell and progress to Item 14.</i></p> | |
| 14. | <p>Does the Tenderer otherwise comply with APNIC Policy in relation to IPv4 Transfers?</p> | |

| Part 3 – Tender Particulars | | |
|--|--|--|
| Tender for allocation of Address Space | | |
| 15. | Address Prefix 43/9 (8 Blocks of /12 available) | Proposed Transfer size (Blocks): Number of addresses: Tendered price per address (USD): Total Tendered price (USD): |
| 16. | <p>If it is successful in its Tender, does the Tenderer have the operational and financial capacity to complete the payment and transfer of the Address Spaces within 30 days of notification that it is a successful Tenderer?</p> <p><i>Insert 'YES' or 'NO' in the Response cell as applicable and attach any information the Tenderer wishes to be taken into consideration in establishing its financial and operational capacity to complete the payment/ For example, the Tenderer should explain briefly how they have the financial capacity to complete the payment ie cash reserves, loan funding etc and provide some form of evidentiary support to validate the proposed funding approach ie audited financial statements, a recent bank statement, loan funding letter, etc</i></p> | |
| Optional – Minimum block number | | |
| 17. | <p>Does the Tenderer have a minimum number of Blocks it will accept (being a number less than the number of Blocks offered in item 15 of the Tender) for the same Tender Price per address, in the event that there is a surplus of Tenders at that Tender Price?</p> <p><i>If YES, Tenderer should enter this response and specify this minimum number of Blocks in the Response cell.</i></p> | Minimum number of Blocks: |

Attachment 1 Tenderer's Statement of Agreement

I, *[insert name and address of the person making the declaration]* a director/trustee/partner of *[Tenderer full legal name]*, have the necessary authority on behalf of *[insert Tenderer's name]* to make the following declaration;

1. Offer

The Tenderer offers to acquire the Address Rights in respect of the Transfer Addresses specified in its Tender on the terms of the Contract for the price tendered in the Tender Response Form. The Tenderer agrees not to withdraw, vary or otherwise compromise this offer during the Tender Validity Period (unless permitted by APIDT).

2. Conflict of interest

The Tenderer represents and warrants to APIDT that there is no conflict of interest, risk of a conflict of interest, or apparent conflict of interest arising through the Tenderer, its officers, employees, agents and advisers placing themselves in a position that may or does give rise to actual, potential or perceived conflict of interest between the interests of APIDT and the Tenderer's interests during the Tendering Process other than as specified in the Tender Response Form.

3. Tenderer's conduct

3.1 The Tenderer agrees that this Tender:

3.1.1 does not contain any false or misleading claim or statement;

3.1.2 has been compiled without the Tenderer:

- (a) engaging in any collusive bidding, anti-competitive conduct with any other Tenderer or any other person, or any other unethical, improper or unlawful conduct;
- (b) violating any applicable laws or policies regarding the offering of inducements; or
- (c) otherwise acting in an unethical or improper manner or contrary to any law; and

3.1.3 has been compiled:

- (a) without improper assistance of employees or ex-employees of APIDT, or any consultants or advisers (or ex-consultants or ex-advisers) to APIDT;
- (b) without using information improperly or unlawfully obtained from APIDT or third parties; and
- (c) not as a result of unethical or improper conduct.

3.2 The Tenderer agrees that it will not make any public announcements concerning the Address Rights or any other matter arising out of this RFT (including the acceptance of any Tender), for publication in any media without the prior written approval of APIDT.

3.3 The Tenderer agrees to indemnify APIDT, the Trustee, its Guardians (APNIC and WIDE Project) and each of their officers, agents and contractors from any claims in relation to or arising out of the process.

4. Corporate capacity

4.1 The Tenderer confirms that:

4.1.1 it has the legal capacity and authority to; and

4.1.2 there are no restrictions under any relevant law to prevent it from,

responding to this RFT or entering into and giving effect to the Contract according to its terms.

5. Acknowledgments

5.1 The Tenderer acknowledges that it has read clause 10 of the RFT which notes Tenderers are responsible for fully informing themselves in relation to all matters arising from the RFT, including by making its own enquiries and ensuring compliance with all applicable laws and policies.

5.2 The Tenderer acknowledges that it and its Related Entities may only submit one single, binding Tender in each Stage of the process (being for one or more Blocks of the Address Space available in that Stage). If the Tenderer's (or a Related Entity's) Tender is successful in one Stage of the process, it will not be eligible to submit a Tender in a subsequent Stage and any Tender it or a Related Entity lodges in respect of a later Stage will not be admitted into evaluation.

5.3 The Tenderer acknowledges and agrees that:

5.3.1 in submitting a Tender, it accepts the terms of the RFT and agrees to comply with the RFT;

5.3.2 representations made in the Tender, when incorporated in any Transfer Agreement, will be fully complied with by the Tenderer; and

5.3.3 the Tenderer has not relied on any representation, letter, document or arrangement, whether oral or in writing, or other conduct of APIDT, as adding to or amending the RFT, except for any addenda issued by APIDT that expressly add to or amend the RFT.

5.4 The Tenderer has observed and accepted that:

5.4.1 The RFT is not an offer to enter into a contract, or any sort of recommendation, and does not include any investment, accounting, financial, legal or tax advice.

5.4.2 The RFT has been prepared for the sole use of Tenderers in deciding whether to proceed with a Tender or to undertake further investigation of the opportunity for purchase of the Address Rights in respect of the Transfer Addresses listed in the RFT. Neither the information in the RFT nor any other information provided to Tenderers by APIDT, its officers, agents or advisers contains or purports to contain all the information that an interested Tenderer would desire or require to assess the opportunity.

5.4.3 Each Tenderer should independently satisfy itself as to the accuracy of the RFT and all information provided to Tenderers and should seek appropriate professional advice about the RFT and all information provided to Tenderers.

- 5.4.4 Tenderers should decide whether to submit a Tender on the basis of their own due diligence investigations, inquiries, advice and knowledge, and the APIDT and its officers, employees, agents and advisers are not under any duty at any time to disclose any fact, matter or circumstance concerning the APIDT, the Address Rights or anything else;
- 5.4.5 APIDT's decision with respect to the outcome of the RFT is final and is not subject to review or challenge;
- 5.5 The Tenderer irrevocably consents to:
- 5.5.1 each Evaluator or Applicable Registry disclosing any information they may receive or hold regarding the Tenderer or its Tender (including the status of the Tenderer's membership or application for membership of an Applicable Registry or the status of their pre-approval requests) to another Evaluator or Applicable Registry for the purposes of the evaluation of the Tenderer's Tender and for no other purpose, other than with the prior written consent of the Tenderer or as required or permitted by law; and
- 5.5.2 APIDT or an Evaluator providing the attached letter to an Applicable Registry to confirm its consent to disclosure of its status.
- 5.6 The Tenderer acknowledges and agrees that:
- 5.6.1 APIDT will publish the names of all successful Tenderers in respect of each IPv4 block, as well as the aggregate price for the transfer of Transfer Addresses;
- 5.6.2 APIDT will make best endeavours to ensure the purchase price tendered by each successful Tenderer is not attributed to the relevant Tenderer; and
- 5.6.3 APIDT will not be liable in the event the purchase price tendered by any successful Tenderer is determinable through the compilation of a report published by APIDT or KPMG and any other publicly available material.

6. Consents

- 6.1 The Tenderer:
- 6.1.1 consents to and authorises APIDT and its officers, employees, agents or advisers to undertake such security, probity and/or financial investigations as APIDT, in its absolute discretion, may determine are necessary in relation to the Tenderer, its partners, associates, subcontractors or related entities including consortium members, and their officers or employees; and
- 6.1.2 agrees to provide, at its cost, all such reasonable assistance to APIDT in this regard.

Signed for and on behalf of *[Insert name of Tenderer, ABN and ACN if applicable]* by:

[Insert name and title]

[Signature]

The signatory warrants that he / she has the authority to bind *[Insert name of Tenderer]*.

[Date]

[Date]

[##Tenderer's Letterhead]

[##Date]

To: [##Insert name of Applicable Registry – either APNIC or an APNIC NIR]

Limited Consent to Disclosure of Confidential Information

[##Tenderer full legal name] is has submitted a Tender to APIDTT Pty Ltd for the transfer of IPv4 address space.

[##Tenderer full legal name] hereby consents to the disclosure of the status of its membership of the Applicable Registry and application for pre-approval to hold sufficient address space to receive the transfer of IPv4 address space to APIDTT Pty Ltd, its officers, agents and contractors for the purpose of the assessment of its Tender.

Yours sincerely

[##Sign]

[##Full name]

[##Role title]

for and on behalf of

[##Tenderer's full legal name]

Note: Tenderer to replace each field denoted by [## ...] with the appropriate information for the specific Tenderer. This note should not be included in the final letter included with the Tender.