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**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**

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# Standard IPv4 Address Space Transfer Agreement

## Dated

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## Parties

Name	<b>APIDTT Pty Ltd ACN 638 389 072 in its capacity as trustee for the Asia Pacific Internet Development Trust</b>
Address	C/- APNIC Pty Ltd, 6 Cordelia Street, South Brisbane, QLD 4101 Australia
Email	craig@apnic.net
Contact	Craig Ng
Short name	<b>APIDT</b>
Name	The Recipient named in item 1 in Schedule 1
Short name	<b>Recipient</b>

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## Background

- A. APIDT has conducted a Request For Tenders (**RFT**) process for the acquisition of IPv4 address space in the ranges of 43/9, 43.128/10, and 43.192/11 (**Address Space**).
- B. The Recipient was the or a successful tenderer for the acquisition of the Transfer Addresses for the Tender Price.
- C. APIDT has agreed to transfer, and the Recipient has agreed to acquire, the Address Rights in respect of the Transfer Addresses for the Tender Price and on the terms and conditions set out in this Agreement.
- D. The parties enter into this Agreement to give effect to the agreement that they have made and their common intentions.

## The Parties Agree

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### 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.



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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## 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.

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## **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.

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**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.

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**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.

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## **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.

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## **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.

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## 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.



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## Schedule 1 Agreement details

Item	Details	Description
1.	<b>Recipient</b>	Name: Address: Email: Contact: Short name:
2.	<b>Transfer Addresses</b>	
3.	<b>Tender Price</b>	

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## Schedule 2      **APIDT's Warranties**

### **1.      APIDT**

- 1.1      APIDT is duly incorporated, validly existing, and in good standing as a company under the Laws of Queensland, Australia.
- 1.2      APIDT has full power and authority to enter into and perform its obligations under this Agreement.
- 1.3      The execution, delivery and performance by APIDT of this Agreement:
  - 1.3.1      complies with its constitution or other constituent documents; and
  - 1.3.2      as far as APIDT is aware, does not constitute a breach of any Law, or cause or result in a default under any agreement, or encumbrance, by which it is bound and which would prevent it from entering into and performing its obligations under this Agreement.
- 1.4      APIDT has taken all corporate and other actions necessary to enable them to enter into and perform its obligations under this Agreement.
- 1.5      This Agreement constitutes and imposes legal and binding obligations on APIDT fully enforceable in accordance with its terms.
- 1.6      Completion of the transactions contemplated by this Agreement by APIDT will not conflict with, result in the breach of, or constitute a default under, or accelerate the performance provided by, any law or the terms of any contract, agreement or deed to which APIDT may be bound or affected.
- 1.7      APIDT and its financial institutions are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties or owned or controlled by such a party.
- 1.8      APIDT is solely responsible for any fees or commissions owed to any broker, investment banker, financial advisor or any other person based upon arrangements made by or on behalf of APIDT in connection with this Agreement.
- 1.9      No receiver, receiver and manager, administrator, controller or similar officer has been appointed nor has any notice been given, petition presented, order made or resolution passed for the appointment of any such person over the whole or any part of the assets or undertaking of any of APIDTs.

### **2.      The Transfer Addresses**

- 2.1      APIDT is entitled to transfer the full legal and beneficial interest in the Address Rights in respect of the Transfer Addresses to the Recipient on the terms set out in this Agreement and the Recipient will acquire the full legal and beneficial ownership of the Address Rights in respect to the Transfer Addresses free and clear of all encumbrances.
- 2.2      At the time of Completion, there will not be any Third Party Interests over the Transfer Addresses.
- 2.3      As at the Completion Date, there are no fees or other payments outstanding to any Authority or person for APIDT to maintain APIDT's rights in the Transfer Address.
- 2.4      With respect to each Transfer Address, APIDT will be responsible for paying all registration fees and other payments (if any) that accrued prior to the Completion Date.

- 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.

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## Schedule 3      Recipient Warranties

- 1.      The Recipient**
- 1.1      The Recipient is duly incorporated, validly existing, and in good standing as a company under the laws of the jurisdiction of its formation.
- 1.2      The Recipient has full power and authority to enter into and perform its obligations under this Agreement.
- 1.3      The Recipient has taken all corporate and other actions necessary to enable it to enter into and perform its obligations under this Agreement.
- 1.4      This Agreement constitutes and imposes legal and binding obligations on it fully enforceable in accordance with its terms.
- 1.5      Completion of the transactions contemplated by this Agreement by the Recipient will not conflict with, result in the breach of, or constitute a default under, or accelerate the performance provided by, any law or the terms of any contract, agreement or deed to which a Recipient may be bound or affected.
- 1.6      The Recipient and its financial institutions are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties or owned or controlled by such a party.
- 1.7      Except for the APIDT Warranties and other representations, warranties and undertakings expressly set out in this Agreement, no representations, warranties or undertakings regarding the future financial performance or prospects of the Transfer Addressees or otherwise:
  - 1.7.1      have been made or given to the Recipient by APIDT or any person on its behalf;
  - 1.7.2      have been relied on by the Recipient; or
  - 1.7.3      have induced or influenced the Recipient to, or have been taken into account by the Recipient as being important to, its decision to buy the Transfer Addressees , agree to any terms of this Agreement, or enter into this Agreement.
- 1.8      The Recipient has entered into this Agreement after satisfactory inspection and investigation of the acquisition of the Transfer Addressees , including a detailed review of all RFT Documentation.
- 1.9      The Recipient has made and relies on its own searches, investigations, enquiries and evaluations regarding the Transfer Addressees, except to the extent expressly set out in the APIDT Warranties and elsewhere in this Agreement.
- 1.10      The Recipient has obtained all necessary approvals, consents and authorisations to enter into and perform its obligations under this Agreement including (if the Recipient is a company) under its constitution, relevant listing rules and the Corporations Act.
- 1.11      The financial information provided in its response to the RFT is current and accurate.
- 1.12      The Recipient has not engaged any broker, investment banker, financial advisor or any other person to provide brokerage services or on behalf of the Recipient in connection with this Agreement.



1.13 Where the Recipient is a corporation:

- 1.13.1 no receiver, receiver and manager, administrator, controller or similar officer has been appointed nor has any notice been given, petition presented, order made or resolution passed for the appointment of any such person over the whole or any part of the assets or undertaking of the Recipient;
- 1.13.2 no petition has been presented, no order has been made and no resolution has been passed for the winding up of the Recipient or for the appointment of a liquidator or provisional liquidator of the Recipient;
- 1.13.3 the Recipient is able to pay its debts as and when they become due and payable within the meaning of section 95A of the Corporations Act;
- 1.13.4 the Recipient has not taken any course of action under the safe harbour provisions in section 588GA of the Corporations Act; and
- 1.13.5 the Recipient 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.

2. **Trustee of a Trust**

If the Recipient has entered into this Agreement in its capacity as trustee of a trust (in this clause, the **Recipient Trust**):

- 2.1.1 it is the only trustee of the Recipient Trust and it is not aware of any action to remove it as trustee of the Recipient Trust;
- 2.1.2 it has power under the deed constituting the Recipient Trust (in this clause, the **Recipient Trust Deed**) and has obtained all necessary approvals, consents and authorisations to enter into and perform its obligations under this Agreement;
  - (a) it is not in default under the Recipient Trust Deed, the Recipient Trust has not been terminated and no vesting of the Recipient Trust's property has occurred and it is not aware of any action proposed to terminate or vest the property of the Recipient Trust;
  - (b) the Recipient Trust's property has not been resettled, set aside or transferred to any other trust;
  - (c) the entry into and the performance of its obligations under this Agreement is for the benefit of the beneficiaries of the Recipient Trust; and
  - (d) it has a right to be indemnified fully out of the Recipient 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 Recipient Trust's property retains its priority over the rights and interests of the Recipient Trust's beneficiaries to the extent provided by any relevant law.



# 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