

Perth Airport Pty Ltd – Common Use Service Terms and Conditions

1 Introduction and application of these terms

- 1.1 These are the standard terms and conditions (**Terms**) that apply to the use of the Common Use Service and Common User Terminal Equipment at the Airport.
- 1.2 To the maximum extent permitted by law, unless otherwise agreed by PAPL in writing, these Terms are the only terms that apply to the use of the Common Use Service and Common User Terminal Equipment by the Operator. Without limitation, all terms and conditions proposed by, or contained in any documents of, the Operator, are expressly excluded.
- 1.3 These Terms are binding on the Operator on the earlier of:
- (1) the Operator confirming acceptance of these Terms by signing and returning a copy of these terms to PAPL; and
 - (2) the Operator's use of the Common Use Service or Common User Terminal Equipment.

2 Definitions and interpretation

- 2.1 In these Terms, unless the contrary intention appears:
- (1) **Airport** means Perth Airport, Perth, Western Australia and all adjacent land and roads controlled by PAPL;
 - (2) **Airport Regulations** means *Airports Act 1996* (Cth), the *Airports Regulations 1997* (Cth) and where any other regulations enacted under the *Airports Act 1996* (Cth);
 - (3) **Authorised User** means those personnel of the Operator who are authorised by the Operator to use the Common Use Terminal Equipment and Common Use Service from time to time;
 - (4) **Best Endeavours** means to:
 - (a) devote expertise and resources where appropriate or necessary;
 - (b) co-operate with the other parties and provide information and assistance to them upon request;
 - (c) act in good faith; and
 - (d) promptly resolve any difficulties or differences, including, if necessary, resolving any disputes,but does not impose any obligation on the parties to provide money or security other than as specifically required under this document;
 - (5) **Business Day** means a day, which is not a Saturday, Sunday or public or bank holiday, in Perth;
 - (6) **Common Use Terminal Equipment** means the common use terminal equipment provided by PAPL at the Airport and includes computer workstations, monitors, keyboards, mice, printers and barcode scanners;
 - (7) **Claims** means actions, suits, causes of action, proceedings, claims or demands;

- (8) **Common Use Service** means the service provided by PAPL to the Operator to provide terminal access from the Common Use Terminal Equipment to the Operator's airline departure control systems;
- (9) **Fees** mean the fees or amounts payable by the Operator to PAPL, as specified in or calculated in accordance with Annexure B;
- (10) **Force Majeure Event** means any cause or condition beyond the reasonable control of the party relying on it, including fire, flood, act of God, war, insurrection, sabotage, acts of terrorism, industrial disturbance, failure of electrical or telecommunications networks, acts of vandalism and changes in legislation or regulations of any government, and in the case of PAPL, a similar event affecting its Providers;
- (11) **Insolvency Event** means the happening of any of these events in relation to a party (**Insolvent Party**):
- (a) execution or other process of a court or authority or distress is levied for an amount exceeding \$50,000 upon any of the Insolvent Party's property and is not satisfied, set aside or withdrawn within 14 days of its issue;
 - (b) an order for payment is made or judgment for an amount exceeding \$50,000 is entered or signed against the Insolvent Party which is not satisfied within 14 days;
 - (c) the Insolvent Party suspends payment of its debts;
 - (d) the Insolvent Party becomes an externally-administered body corporate under the *Corporations Act 2001* (Cth);
 - (e) steps are taken by any person towards making the Insolvent Party an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days);
 - (f) a controller, as defined in section 9 of the *Corporations Act 2001* (Cth), is appointed of any of the property of the Insolvent Party or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 14 days); or
 - (g) the Insolvent Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001* (Cth);
- (12) **PAPL** means Perth Airport Pty Ltd (ABN 24 077 153 130);
- (13) **Permitted Purpose** means the purpose of accessing the Operator's departure control system to process passengers at the Airport, from check-in to departure, by issuing boarding passes, printing bag tags and undertaking document verification;
- (14) **Provider** means any provider and contractor appointed by PAPL from time to time to supply any part of Common Use Terminal Equipment or Common Use Service; and
- (15) **Operator** means the airline operator which uses the Common Use Terminal Equipment and Common Use Service at the Airport.

2.2 Reference to a party includes the party's executors, administrators, successors and permitted assigns.

2.3 "Including" and similar expressions are not words of limitation.

- 2.4 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 2.5 Headings are for convenience only and do not form part of the Terms or affect its interpretation.
- 2.6 A provision of the Terms must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms.

3 Provision of Common Use Equipment and Common Use Service

- 3.1 PAPL grants to the Operator and its Authorised Users a non exclusive right to use the Common Use Terminal Equipment and Common Use Service on the terms of these Terms, and solely for the Permitted Purpose.
- 3.2 The Operator must maintain a list of the Authorised Users, and must provide that list to PAPL upon request. The Operator must ensure that its Authorised Users comply with these Terms. The acts and omissions of the Authorised Users are deemed to be the acts and omissions of the Operators for the purposes of these Terms.
- 3.3 The Operator acknowledges that its use of the Common Use Terminal Equipment and Common Use Service are in common with other airline operators at the Airport, and that the Operator does not have exclusive possession or dedicated use of such equipment and service.
- 3.4 The Operator is responsible for ensure that its departure control system remains compatible with the Common Use Terminal Equipment or Common Use Service. The Operator must notify PAPL as soon as practical of any change, upgrade or modification to the Operator's departure control system (**DCS Changes**). If any changes are required to the Common Use Terminal Equipment or Common Use Service in order to accommodate the DCS Changes, the Operator must on demand pay PAPL all costs and expenses incurred in making such changes.

4 Charges

4.1 Operator to pay PAPL

- (1) The Operator agrees to pay PAPL all Fees determined in accordance with Annexure B unless otherwise agreed in writing between the Operator and PAPL.
- (2) PAPL will provide the Operator with a schedule of the Fees in the form set out in Annexure B at least annually or whenever prices are varied.
- (3) The Operator is liable for and shall pay PAPL all fees and charges incurred by the Operator and invoiced by PAPL in accordance with these Terms.

4.2 Rebates

PAPL reserves the right to provide rebates to the Operator or any other airline operators in accordance with PAPL's rebate policy determined from time to time by PAPL in its sole and absolute discretion.

4.3 Invoicing and payment of Fees

- (1) PAPL will provide the Operator with an invoice each calendar month. PAPL will use Best Endeavours to issue the invoice within five Business Days after receipt of a

“Statement of Information” under the Prices and Services Agreement between PAPL and the Operator (**PSA**).

- (2) The invoice will detail the Fees as determined by Annexure B.
- (3) PAPL will issue a statement of account which may be in electronic form with the invoice outlining the current invoice, amounts overdue for payment, cash receipts, account adjustments, outstanding balance and statement payment due date.
- (4) The statement payment due date will be the 30th day of the month after the month to which the invoice applies.
- (5) The Operator must pay each invoice on or before the statement payment due date, save and except to the extent that the Operator, acting reasonably, believes the invoice is in error and the Operator has informed PAPL of the error in writing.
- (6) Accounts must be paid by electronic funds transfer to PAPL's nominated bank account for the time being notified by PAPL to the Operator, or as otherwise agreed by PAPL and the Operator.

4.4 **Amendments to Invoices**

- (1) PAPL is under no obligation to change invoices or payments if it has correctly processed the Operator's information under the PSA.
- (2) PAPL at its sole discretion, acting reasonably, may alter an invoice or payment if the Operator's information is corrected under the PSA or is otherwise in error.

4.5 **Arrears of Payment**

- (1) If any amount due and payable to PAPL is not paid within 30 days after the date on which the amount becomes due and payable under these Terms, the Operator shall pay PAPL interest calculated on a daily basis from the date on which the amount became due and payable until the date of payment (both dates inclusive) at the reference lending rate of Westpac Banking Corporation at the date of payment plus 2%. Interest must be paid by the Operator at the same time as it pays the amount to which the payment relates.
- (2) Without limiting clause 4.5(1), PAPL reserves the right to demand, and the Operator shall pay if demanded the following late payment administration fees in respect of any amount which becomes due and payable under these Terms:
 - (a) any amount not paid by 60 days after the due date - \$300; or
 - (b) any amount not paid by 90 days after the due date - \$500.

4.6 **Failure to provide information**

- (1) If the Operator fails to provide the “Statement of Information” in accordance with the PSA, then the Fees will be as determined by PAPL until the Operator provides a correct “Statement of Information”, and the Operator shall be liable to pay the amount determined by PAPL but subject to alteration as provided by clause 4.6(2).
- (2) If the information provided by the Operator under the PSA is adjusted (for example, by agreement or by an independent auditor), then PAPL will adjust the Fees (if necessary) in accordance with the revised information, and PAPL shall make an appropriate adjustment to the next invoice such that the Operator will have paid the correct amount upon payment of that invoice.

4.7 No Set-Off

Except as is provided for in clause 4.3(5), the Operator shall not make any set-off against or deduction from any amount payable by the Operator to PAPL under these Terms without the consent in writing of PAPL. If there is a dispute between the Operator and PAPL the Operator shall pay the amount in full pending resolution of the dispute unless specific alternative arrangements have been previously agreed in writing between the Operator and PAPL.

4.8 GST

Unless GST is expressly included, the consideration to be paid or provided under these Terms or any supply made under or in connection with these Terms does not include GST. To the extent that any supply made under or in connection with these Terms is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided.

5 Usage conditions

- 5.1 The Operator must comply with the usage rules set out in Annexure A, and any reasonable directions of PAPL. PAPL may amend the usage rules from time to time by giving the Operator reasonable prior notice of the change.
- 5.2 The Operator must only use the Common Use Terminal Equipment and Common Use Service for the Permitted Purpose, and in accordance with all relevant legislation and regulatory requirements (including the Airport Regulations and laws relating to privacy and security).
- 5.3 Without limiting other provisions of these Terms, the Operator must not:
- (1) modify, adapt, reverse-engineer, decompile, disassemble, or otherwise discover the source code of, any software or documentation comprised in the systems and software that comprise the Common Use Terminal Equipment and Common Use Service, or attempt to do so for any reason;
 - (2) use any software, product or system forming part of the Common Use Terminal Equipment and Common Use Service in combination with any other software, product or system, except as approved by PAPL;
 - (3) rent, sell, lease, sublicense, distribute, assign, copy, or in any way transfer the underlying software in the Common Use Terminal Equipment and Common Use Service or use the same for the benefit of any third party through any outsourcing or time-sharing arrangement or through the operation of any service bureau; or
 - (4) use or exploit any software, product or system forming part of the Common Use Terminal Equipment or Common Use Service for any purpose other than the Permitted Purpose.

6 Common Use Terminal Equipment

- 6.1 Title to the Common Use Terminal Equipment remains with PAPL (or its lessor or financier, as applicable) at all times.
- 6.2 The Operator must take proper care of any Common Use Terminal Equipment under its possession or control.

- 6.3 The Operator must not remove, replace, repair or alter any part of the Common Use Terminal Equipment without the prior written permission of PAPL (which may be given or withheld at PAPL's absolute discretion).
- 6.4 PAPL may inspect, vary, repair, maintain or replace any item of the Common Use Terminal Equipment from time to time. The Operator must give PAPL or its representative reasonable access to the Common Use Terminal Equipment for such purpose.

7 Liability

- 7.1 PAPL warrants that it has the authority to provide Common Use Terminal Equipment and Common Use Service to the Operator on these Terms.
- 7.2 All statutory or implied conditions, guarantees and warranties are excluded by PAPL to the maximum extent permitted by applicable law. To the extent permitted by applicable law, where liability under any condition, guarantee or warranty which cannot legally be excluded but can be validly limited, such liability is limited to, to the maximum extent permitted by law, such as resupplying the service or paying the cost of having the services supplied again.
- 7.3 To the maximum extent permitted by law, but subject to clause 7.1:
- (1) PAPL will not be liable to the Operator in any circumstances for any indirect, economic, special or consequential loss or damage, or in any event for any loss of revenue, loss of savings, loss or damage due to delays in aircraft movement, loss of reputation, loss of profit or loss of data, third party claims against the Operator, whether or not the possibility of such loss was brought to the attention of PAPL; and
 - (2) the total liability of PAPL to the Operator for any loss on any basis and in any circumstances arising out of or in connection with these Terms or the provision or use of any Common Use Terminal Equipment or Common Use Service, in respect of all causes of action that arise in any calendar year, will not exceed the aggregate amount of Fees paid by the Operator to PAPL under these Terms in that calendar year.
- 7.4 The Operator must pay PAPL for the cost of any repairs or replacement of any Common Use Terminal Equipment that is lost, stolen or damaged by the Operator due to negligence, misuse or damage by the Operator.
- 7.5 To the extent permitted by law, Part 1F of the *Civil Liability Act 2002 (WA)* is excluded from operation with respect to any dispute, claim, action, or any matter whatsoever, arising under, out of or in connection with these Terms or the provision or use of any Common Use Terminal Equipment or Common Use Service.

8 Providers

- 8.1 PAPL may subcontract the provision of any part of the Common Use Terminal Equipment or Common Use Service to any Providers. PAPL may from time to time notify the Operator of the identity of the Providers.
- 8.2 The Operator acknowledges and agrees that information and data that it provides to PAPL in connection with the use of the Common Use Terminal Equipment or Common Use Service may be disclosed by PAPL to its Providers for the purposes of providing the Common Use Terminal Equipment or Common Use Service, and that such Providers or their systems and network may be located outside Australia.
- 8.3 The Operator acknowledges that it has no rights or entitlement to enforce any agreements between PAPL and its Providers, and the Operator agrees that it will not bring any Claims

against any person that the Operator knows, or reasonably ought to know, is a Provider, in connection with the Common Use Terminal Equipment, Common Use Service or their use.

- 8.4 The Operator indemnifies PAPL from and against all loss, damage, cost, expense, liability and Claim suffered or incurred by PAPL in connection with the Operator bringing any Claims against any person in breach of clause 8.3.

9 Outages

- 9.1 PAPL may from time to time schedule outages and unavailability to the Common Use Terminal Equipment and Common Use Service. PAPL will provide the Operator reasonable notice prior to a scheduled outage.
- 9.2 PAPL may also introduce extraordinary scheduled outages without prior notice to the Operator if for the following purposes:
- (1) to implement a platform technology changes to the Common Use Service that cannot be reasonably implemented with a normal scheduled outage; or
 - (2) to remedy system issues that cannot be reasonably implemented with a normal scheduled outage, as determined by PAPL or its Providers.
- 9.3 PAPL is not liable to the Operator for any loss arising from or in connection with any scheduled outage or extraordinary scheduled outage described in clauses 9.1 and 9.2.

10 Termination and suspension

- 10.1 PAPL may terminate or suspend the Operator's use of the Common Use Terminal Equipment or Common Use Service if:
- (1) the Operator has failed to pay to PAPL within 21 days of the due date shown on any invoice issued by PAPL in accordance with clause 4.3, PAPL has given the Operator not less than 14 days notice in writing of its intention to terminate if the Operator fails to pay, and the invoice remains unpaid at the expiration of the notice;
 - (2) the Operator suffers from an Insolvency Event;
 - (3) the Operator commits a material breach of these Terms which the Operator fails to remedy within 14 days after notice from PAPL requiring remedy;
 - (4) the Operator commits any breach of clause 5; or
 - (5) PAPL gives the Operator at least 60 days prior notice of the termination.
- 10.2 On termination or suspension, the Operator must cease further use of the Common Use Terminal Equipment and Common Use Service, and PAPL may prevent the Operator from further use of the Common Use Terminal Equipment and Common Use Service without any liability to the Operator.
- 10.3 Termination of the Operator's rights to use the Common Use Terminal Equipment and Common Use Service does not affect any existing rights or remedies of either party.
- 10.4 Clauses of these Terms that are expressed or intended to survive termination will survive termination or expiry of these Terms.
- 10.5 To the extent that these Terms grants or entitles the Operator to any licence, whether expressed or implied, in respect of any part of the Airport, that licence terminates

automatically on the creation of an interest in these Terms in favour of a person that is, either alone or with one or more associates, in a position to exercise control over either or both of:

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

This clause 10.5 is inserted because of regulation 2.17 of the Airport Regulations and only has effect if and to the extent that it is required by the regulations to be included in these Terms.

11 General

11.1 Force majeure

- (1) PAPL will not be liable to for any or failure to perform or delay in performing any obligations under these Terms to the extent caused by a Force Majeure Event. The obligations of PAPL (and the usage rights of the Operator) are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.
- (2) If PAPL is affected by a Force Majeure Event, PAPL will promptly notify the Operator in writing.

11.2 Further assurance

Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to these Terms.

11.3 Variations

- (1) To the extent permitted by law, PAPL may from time to time vary these Terms if PAPL considers it necessary to do so. PAPL will notify the Operator of any variations, and the effective date of the variation. Unless the variation is urgent (for example, as a result of change in law), PAPL will give the Operator reasonable prior notice of the variation. If the Operator does not agree with the variation, the Operator may terminate these Terms and cease use of the Common Use Terminal Equipment and Common Use Service,
- (2) The continued use of the Common Use Terminal Equipment and Common Use Service by the Operator will constitute acceptance of the variation by the Operator.

11.4 Relationship of parties

Nothing in these Terms is to be construed as constituting one party as employer, agent or partner of the other party or in joint venture with the other party. No party has authority to bind or purport to bind the other party.

11.5 Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

11.6 Severability

Notwithstanding that the whole or any part of any provision of these Terms may prove to be illegal or unenforceable the other provisions of these Terms and the remainder of the provision in question shall remain in full force and effect.

11.7 Assignment

The rights granted under these Terms are personal to the Operator and the Operator must not assign or otherwise deal with these Terms or the rights and obligations under them except with the prior written consent of PAPL, which consent may be withheld at PAPL absolute discretion.

11.8 Notices

A notice or other communication connected with these Terms has no legal effect unless it is in writing and in the English language.

11.9 Governing law and jurisdiction

- (1) These Terms will be interpreted under and governed by the laws of Western Australia. The parties submit to the non-exclusive jurisdiction of the courts of Western Australia and any courts that may hear appeals from those courts in respect of any proceedings in connection with these Terms.
- (2) These Terms are subject to the Airport Regulations and all laws applying to the Airport and any matter or thing occurring or which has been done on or otherwise related to the Airport. To the extent of any inconsistencies between these Terms and the Airport Regulations, the Airport Regulations will apply.

Signed and Agreed:

Name: _____

Name: Rowan Chalmers

Position: _____

Position: EGM Operations/Customer Experience

Company: _____

Company: Perth Airport Pty Limited

Date: _____

Date: _____

Annexure A Usage Rules

The Operator and its Authorised Users must report, using the telephone support service provided by PAPL from time to time, in the event that an item of Common Use Terminal Equipment becomes faulty. Authorised Users must have completed some basic fault remediation, as per their training, prior to calling the telephone support service.

The Operator and its Authorised Users must not connect any devices to the Common Use Terminal Equipment including, but not limited to, additional printers, USB flash drives, portable hard drives, eftpos machines.

Annexure B Fee Schedule

If the Operator has executed these Terms unamended and provided PAPL with the original executed copy, the Fees will be calculated in accordance table.

Cost per departing passenger:

Terminal 1 \$0.45

Terminal 2 \$0.045

Fees are subject to annual review and adjustment. Any adjustments (increase/decrease) are to be proposed at the Q3 Joint AOC/PAPL ACUS review board meeting and would be effective at the commencement of the following financial year. As an example if an adjustment was agreed in January 2017 it would be effective from July 1, 2017.

Annexure C

ACUS Customer Support Plan & Review Board Meetings

A comprehensive ACUS Customer Support Plan has been agreed between Perth Airport and amadeus to support users of ACUS. The most current version of this plan is version 1.1 09/2015 and should be read in conjunction with this agreement.

On a quarterly basis PAPL will convene a ACUS Review Board meeting. The purpose of this meeting is to review ACUS system performance and statistical performance reports provided by amadeus.

Composition of the Review Board shall be as follows:

- (i) 2 named participants from the current AOC airline membership
- (ii) 2 named participants from PAPL operational management
- (iii) 2 named participants from amadeus technical and/or account management

A quorum of a minimum of 1 participant from each area is required to hold the meeting. All meetings will occur in Perth and teleconference participation is considered acceptable attendance.

PAPL will organise the meetings and provide the secretariat and minutes.

In addition to reviewing system performance (to include up-time, availability, hardware performance, connectivity etc.) the Board will also consider future system developments (such as new airline additions, new technology implementations, hardware updates, peripheral additions etc.).

Minutes of board meetings are to be circulated to AOC members of good standing.

Fee adjustments will be discussed at the 3rd board meeting of the financial year (usually held between January and March) with an adjustment effective date of July 1 of that year.