

# API LEISURE & LIFESTYLE - PROGRAM AGREEMENT

**Date:** 15 July 2014

**This Agreement is made between:** Fair Work Building and Construction ("FWBC") (ABN 68 003 725 098) of 533 St Kilda Rd, Melbourne, VIC, 3004

Australian Post-Tel Institute Ltd. trading as API Leisure & Lifestyle (ABN 33 115 072 547) of Level 2, 695-699 George Street, Sydney, New South Wales 2000. ("API")

## INTERPRETATION OF TERMS USED IN THE AGREEMENT

**Account Manager:** [REDACTED] as at the Commencement Date

**Agents:** Means any third party that assists API in the delivery of any component of the Program.

**API:** Shall refer to Australian Post-Tel Institute Ltd., trading as API Leisure & Lifestyle.

**API Management Office:** 601, 140 Bourke Street, Melbourne, VIC, 3000

**Billing - Annual Program Fees:** [REDACTED]

**Billing - Commencement Date:** 9 September 2014 (the agreed date for the commencement of billing of the program)

**Billing - Programs Provided:** Means the actual number of programs provided to employees

**Billing - Minimum Numbers:** 120 being the minimum number of employees this program will be billed for in the term of this agreement

**Branded Communication:** Fair Work Building and Construction branded communication elements will include:

- Monthly Lifestyle Online
- API Lifestyle Website

**Commencement List:** Initial list of Fair Work Building and Construction employees provided so that Initial Program components may be manufactured.

**Confidential Information:** Means and includes:

- (a) Information marked as confidential;
- (b) Information, copies or examples of the Program or any part of it;
- (c) Information, copies or examples of the Program or any part of it and reports or reporting on the Program;
- (d) Information which by its nature is either confidential or should reasonably be regarded as, confidential to the party to whom it belongs or relates.

**Directory:** Means the annual hard copy communication which lists the API Leisure & Lifestyle range of products and services.

<b>Employees:</b>	Means all permanent full time and part time employees of the Fair Work Building and Construction.
<b>Intellectual Property:</b>	Means all present and future intellectual rights of a party, however arising and wherever existing, including the Program and each part of it, brand names, copyright, designs, domain names, inventions, know how, patents, product names, reports, report formats, trademarks, trade secrets and/or any other right in the product or results of intellectual effort in any field, and any application (or right to make an application), any registration, renewal and/or extension of any such rights;
<b>Leisure &amp; Lifestyle Products:</b>	Means the range of products and services that API provides that are documented in the employee annual Directory, magazine, online communications and presentations.
<b>Marketing Fee:</b>	Means additional Fair Work Building and Construction branding costs as requested by Fair Work Building and Construction.
<b>Parties:</b>	Shall refer to API as one party and Fair Work Building and Construction as the other party.
<b>Program:</b>	Means the services and products provided by API to the Fair Work Building and Construction including the annual Directory listing the Leisure & Lifestyle products, the magazine, website access, issue of employee identification cards and online communications provided by API under this Agreement. Details of the program are outlined in the Annexure – 'Employee Benefits Program Proposal'.
<b>Program Fee:</b>	Means the annual fees for the API Leisure & Lifestyle Program
<b>Term:</b>	24 Months commencing on the Billing Commencement Date and any extension or renewal of It under this Agreement.
<b>Unforeseen Event:</b>	<p>Means any act, event or cause including:</p> <ul style="list-style-type: none"> <li>(a) act of God, riot, act of terrorism, insurrection, civil commotion, national emergency (whether in fact or law), fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, product recall, strike, lockout or other labour difficulty and/or industrial action;</li> <li>(b) action or inaction of a Government body, including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order;</li> <li>(c) breakdown of plant, machinery or equipment; or</li> <li>(d) shortages of labour, transportation, fuel, power or plant, machinery, equipment, supplies, components or materials,</li> </ul> <p>or any other act, event or cause outside the reasonable control of the party relying upon it, which directly or indirectly results in a party being prevented from or delayed in performing any of its obligations under this agreement.</p>

**Recitals**

- a) Fair Work Building and Construction wishes to purchase the Program from API and supply the benefits of the Program to all Fair Work Building and Construction employees residing in Australia.
- b) API has agreed to supply the Program to Fair Work Building and Construction in consideration of payment of the Program Fee under the terms and conditions listed in this Agreement.

**IT IS AGREED AS FOLLOWS:**

**1. FWBC PROGRAM**

- 1.1. API will provide the Program to Fair Work Building and Construction employees for the Term of this Agreement. The API Leisure & Lifestyle products to be provided to Fair Work Building and Construction employees will be those set out in the Directory, together with varied or new products to be developed at the discretion of API from time to time. The Program will include provision of the API Leisure & Lifestyle annual Directory, Lifestyle magazine, API Identification Card, website, emails and agreed presentations to employees.
- 1.2. API will send the Lifestyle magazines directly to the employee's home address. The hotline, 1300 653 322, will be serviced from 9.00 am to 5.00 pm EST Monday to Friday. API offices are available to service personal visitors from Monday to Friday 9.00 am to 4.30 pm except public holidays.

**2. AVAILABILITY**

- 2.1. API will make the Program available to all Fair Work Building and Construction employees residing within Australia.

**3. SERVICING THE FWBC PROGRAM**

- 3.1. Fair Work Building and Construction shall assist API in promoting the Program through the mechanisms outlined in clauses 7.1.1 to 7.1.4.
- 3.2. API shall ensure that its staff will use their best efforts to provide relevant and appropriate information in relation to the Program when dealing with Fair Work Building and Construction employees.

**4. USE OF FWBC OR API NAME, LOGO AND TRADEMARKS**

- 4.1. The parties undertake that neither will make use of, or allow others to make use of, the other's name, logo or other trade or registered marks in any form without prior consent of the other party.
- 4.2. Both parties shall approve the style and content of any advertising material for the Program.

**5. MANAGING THE FWBC PROGRAM**

- 5.1. API will nominate a member of staff from time to time to act as an Account Manager for the Program. The Account Manager will generally be located at the API Management Office. The Account Manager will be responsible for conducting regular review meetings with Fair Work Building and Construction as well as acting as the first point of contact for any Fair Work Building and Construction account inquiries.
- 5.2. Fair Work Building and Construction will appoint a member of staff to act as Fair Work Building and Construction Representative and will be the first point of contact for the Account Manager.

**6. API'S OBLIGATIONS**

- 6.1. The obligations of API are as follows:
  - 6.1.1. to advise Fair Work Building and Construction of any variations to the condition or policies of the Program or variations to the terms on which parts of the Program may be provided
  - 6.1.2. to provide Fair Work Building and Construction with such technical information, advice and assistance as Fair Work Building and Construction may reasonably require for the purposes of this Agreement
  - 6.1.3. to expeditiously and properly deal with all inquiries that may be directed to API in relation to Leisure & Lifestyle products

- 6.1.4. to dispatch monthly Lifestyle Online email and periodic email blasts to all Fair Work Building and Construction staff

## 7. FWBC'S OBLIGATIONS

- 7.1. The obligations of Fair Work Building and Construction are as follows:
  - 7.1.1. to assist API in promoting the Fair Work Building and Construction Program to all staff
  - 7.1.2. facilitate API reasonable access to Fair Work Building and Construction's offices to promote and deliver the range of services within the Fair Work Building and Construction Program
  - 7.1.3. to update API on changes in Fair Work Building and Construction employee addresses on a regular basis
  - 7.1.4. to provide API with a list of new and/or terminated Fair Work Building and Construction employees each month. This list is to be provided as an Excel file in the format advised by API

## 8. PRIVACY AND COMMUNICATIONS

- 8.1. Fair Work Building and Construction shall provide to API the full names and mailing addresses of each of its employees to be enrolled as members of the Program. Notwithstanding anything contained herein, API shall not:
  - 8.1.1. store, process or use any data or information regarding Fair Work Building and Construction or its employees provided to or otherwise obtained by API in any manner other than for the provision of the Fair Work Building and Construction Program under this Agreement
  - 8.1.2. unless requested otherwise by employees, advertise, promote or market the Program directly to Fair Work Building and Construction employees
- 8.2. Notices, materials and documentation relating to the advertising, promotion or marketing of the Program shall be directed to Fair Work Building and Construction's nominated 'API Representative' and Fair Work Building and Construction may deliver such notices, materials and documentation to its employees.
- 8.3. API must take all reasonable steps to:
  - 8.3.1. ensure that the data used is up to date and is the latest information provided by Fair Work Building and Construction
  - 8.3.2. to protect the information from unauthorised access or modification

## 9. CONFIDENTIALITY ARRANGEMENT

- 9.1. All Confidential Information together with all Information concerning the business, know-how, finances, personal employee details or otherwise of either party (or Fair Work Building and Construction employees) whether supplied by one party to the other or not, shall be regarded as confidential by the parties and Agents, and will not be disclosed to any other third party and/or used for any purpose other than to achieve the objectives of this Agreement by the party to whom such information is disclosed, except under compulsion of law.
- 9.2. Except to the extent necessary to comply with a legal obligation, neither party will make public, disclose or use for purposes other than for the purposes of this agreement, the Confidential Information of the other, unless given prior written approval.
- 9.3. Each party will take all reasonable steps to secure and keep secure the other party's Confidential Information coming into its possession or control.

## **10. ISSUING THE FWBC PROGRAM**

- 10.1. Following receipt of advice from Fair Work Building and Construction API will issue each employee with an API Leisure & Lifestyle Identification Card, API Leisure & Lifestyle Directory and an introduction letter. These items will initially be provided at the Program launch presentations. For any staff that join Fair Work Building and Construction subsequent to the initial launches, API will send these same items to the employees' current mailing address, as advised by Fair Work Building and Construction.

Prior to the end of the calendar year, API will reconcile a list of employees that will be provided with the Program at the commencement of the next calendar year. This number will become the 'Commencement List' and API will make available materials for an additional 25% as described above.

If the additional 25% of materials has been dispatched, Fair Work Building and Construction may elect to request API to print further directories and cards at Fair Work Building and Construction cost or use generic materials. There is no rebate for any unused materials.

- 10.2 Where an Unforeseen Event occurs:

- 10.2.1 The affected party must promptly give the other party written notice of that fact and the period of delay;
- 10.2.2 The affected party will not be liable for the failure or delay to the extent of the Unforeseen Event; and
- 10.2.3 The affected party's obligations (excluding the obligation to make payment, limited to one payment in advance under this agreement) are suspended to the extent of the Unforeseen Event prevents that party from fulfilling its obligations under this agreement.

## **11. BILLING FOR THE FWBC PROGRAM**

- 11.1. Subject to this clause, Fair Work Building and Construction will pay API the Program Fee, for the Employees per annum during the term of the Agreement. Notwithstanding the previous provision the Program Fee will be determined on the number of programs provided or the Minimum Number of Employees, whichever is the greater. The initial number of employees that are to be issued with the Program will be advised to API through the provision of the 'Commencement List' of employees, by Fair Work Building and Construction prior to the launch of the Program.
- 11.2. One quarter of the annual Program Fees will be invoiced and are payable in advance of each calendar quarterly period.
- 11.3. This is an annual Program with costs associated in issuing the API Leisure & Lifestyle Directory and Identification Card. API will invoice and Fair Work Building and Construction will pay for each employee on the 'Commencement List', in four equal quarterly payments described in 11.1 and 11.2, even when an employee on the 'Commencement List' ceases employment with Fair Work Building and Construction after the commencement of the particular year of the Term to which the Program Fee relates. Fair Work Building and Construction employees that commence employment and are issued with the Program during any quarter will only be charged pro-rata from the start of the next quarter until the anniversary of the Program commencement date. At the anniversary of the Program commencement date, all Fair Work Building and Construction employees that are currently employed and issued with the Program will constitute the 'Commencement List' for the following 12 month period.
- 11.4. In the event that Fair Work Building and Construction acquires another company of greater than 50 employees and, at the election of Fair Work Building and Construction, those employees are to be issued with the Program, invoices will be raised for these groups effective immediately from the date of induction.

- 11.5. All payments shall be made by Fair Work Building and Construction within fourteen (14) days after service of a tax invoice from API for each respective quarter. If there are any amounts in dispute, only the amount in dispute will be withheld from payment. Fair Work Building and Construction agrees to pay interest on any unpaid invoices at a rate equal to 5 % per annum applied pro-rata for the period the invoice remains unpaid. If payments are not made in full or for the balance less any amount in dispute within such fourteen (14) day period after service of a tax invoice from API then API may in addition to its other rights withdraw the Program without further notice.

**12. WHOLE AGREEMENT**

- 12.1. This Agreement embodies the whole Agreement between the parties relating to the subject matter of this Agreement and supersedes any and all oral and written negotiations and communications by or on behalf of any of them. The parties have not, in entering into this Agreement, relied upon any warranty representation or statement, whether oral or written, made or published by any other party or any person on behalf of any other party or otherwise in connection howsoever with the subject matter of this Agreement, except such as are expressly provided herein and subject thereto have relied entirely upon their own enquires relating to the subject matter of this Agreement. The parties agree that to the extent that each of them may exclude any warranties or conditions which might otherwise be implied in connection with this Agreement or the subject matter of this Agreement by any competent legislation, then each party expressly excludes from application all such Implied warranties and conditions.

**13. TERMINATION OF THE FWBC PROGRAM**

- 13.1. Fair Work Building and Construction shall be entitled to terminate this Agreement if:
- 13.1.1. API is in breach of a material term of this Agreement which is not rectified within thirty days after written notice setting out the terms of the breach
  - 13.1.2. API has a liquidator receiver/manager, administrator or form of external administration appointed to its affairs
- 13.2. If Fair Work Building and Construction terminates this Agreement for any reason prior to the expiry of the Term, other than for the reasons expressed in 13.1.1 and 13.1.2, Fair Work Building and Construction will pay to API all fees that would otherwise be due under the full term of this Agreement whether they are billed or unbilled within 14 days of the termination.
- 13.3. API shall be entitled to terminate this Agreement If:
- 13.3.1. Fair Work Building and Construction is in breach of a material term of this Agreement (other than the obligation to pay the Program Fee) which is not rectified within thirty days after written notice setting out the terms of the breach; or
  - 13.3.2. Fair Work Building and Construction has a liquidator receiver/manager, administrator or form of external administration appointed to its affairs; or
  - 13.3.3. Fair Work Building and Construction fails to pay the Program Fee in accordance with this Agreement,

**14. RENEWAL TERM**

- 14.1. At the conclusion of the Term, this Agreement shall automatically renew under the same terms and conditions with an annual adjustment for CPI being applied to the Program Fee, unless either party elects not to renew by providing at least 60 days written notice prior to the end of the Term, or as otherwise agreed between the parties. All other terms and conditions shall remain the same.
- 14.2. API may for any extension of the Term, propose new rates which both Parties will negotiate in good faith. Any new rates will be agreed no more than 120 days and no less than 60 days prior to the end of the Term of the existing Agreement.
- 14.3. In the event either party elects not to renew the Agreement, all fees under this Agreement will cease at the end of the Term of the Agreement.

**15. DISPUTE RESOLUTION**

- 15.1. The following procedure applies if a dispute under this Agreement arises:
  - 15.1.1. the party claiming that a dispute has arisen must give notice to the other party indicating the nature of the dispute
  - 15.1.2. upon receipt of the notice a senior representative of each of the parties must meet and attempt to resolve the dispute within 7 days of receipt of such notice
  - 15.1.3. if the parties fail to resolve the dispute within 14 days from the date of the meeting the CEO or CEO's nominee, must meet and attempt to resolve the dispute within 7 days
  - 15.1.4. if the parties fail to resolve the dispute within the 7-day period, the parties may take whatever action they consider necessary to resolve the dispute

**16. SEVERABILITY**

- 16.1. If the whole or any part of a provision of this Agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.

**17. APPLICABLE LAW & JURISDICTION**

- 17.1. This agreement is governed by and must be construed in accordance with the laws in force in New South Wales and the parties hereby submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia.

**18. NO PARTNERSHIP OR AGENCY**

- 18.1. This agreement does not create a partnership or appoint API as agent for Fair Work Building and Construction.

**19. NO ASSIGNMENT**

- 19.1. This agreement is personal to the parties and may not be assigned.

**20. GST**


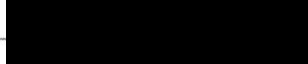

- 20.1. All Prices are excluding GST unless otherwise indicated. All GST is payable at the time of payment and in accordance with any Tax Invoice issued.



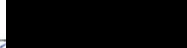
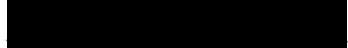


21. INTELLECTUAL PROPERTY

- 21.1. Fair Work Building and Construction indemnifies API and will hold API harmless from any and all liability however arising, including cost for any infringement of any patent, trade mark or any other form of intellectual property, arising from the Program.
- 21.2. Each party acknowledges and agrees that it will not:
- 21.2.1. obtain any interest in, or any right or title to, the other party's Intellectual Property;
  - 21.2.2. represent itself as the owner of or having any interest in the other party's Intellectual Property or any part of it; and/or
  - 21.2.3. use (or allow the use of) any of the other party's Intellectual Property or any part of it, in a manner that is contrary to or conflicts with or in any way damages the title or interest of that party, in its Intellectual Property.
- 21.3. API reserves the right at any time to require that Fair Work Building and Construction cease using any or all trademarks, service marks, insignia, logos, patents, designs, copyright materials, reports, trade secrets, and other Intellectual Property belonging to API, and also that Fair Work Building and Construction ceases promoting that it, or any related body corporates of it, are in any way connected with or to, API.

SIGNED FOR AND ON BEHALF OF FAIR WORK BUILDING AND CONSTRUCTION

Signed:		Witness:	
Print Name:	NIGEL HADGKISS	Print Name:	
Title	Director	Title:	HR Adviser
Date:	8/9/14	Date:	8/9/14

SIGNED FOR AND ON BEHALF OF API LEISURE & LIFESTYLE

Signed:		Witness:	
Print Name:		Print Name:	
Title	BUSINESS DEVELOPMENT MGR	Title:	Account Manager
Date:	10/9/14	Date:	10/9/14