

SMARTPAY ALIPAY & WECHAT PAY MERCHANT AGREEMENT AUSTRALIA

Last Updated November 2019

THIS AGREEMENT is entered into between Smartpay Australia Pty Limited ("**Acquirer**") and the applicant listed on the Merchant Application ("**Merchant**") and unless otherwise agreed in writing shall be effective from the Commencement Date until terminated in accordance with this Agreement.

The Acquirer/Merchant relationship is governed by the Merchant Application, Master Merchant Terms and Conditions, this Agreement and the Alipay and/or WeChat Pay Terms and Conditions available on their respective websites.

THIS AGREEMENT is comprised of:

1. Schedule 1 – Services;
2. Schedule 2 – Service Fee and Settlement;
3. Schedule 3 – Terms and Conditions of Agreement;
4. Schedule 4 – Acquirer Operating Rules;
5. Appendix 1 – Prohibited and Restricted Product List.

AGREEMENT ENTERED INTO by the Parties on the date specified on the Merchant Application

SCHEDULE 1 - SERVICES

Service Description

Smartpay Australia Pty Limited is an acquirer of Alipay and WeChat Pay payments.

The Acquirer processes transaction payments via Alipay and/or WeChat Pay on behalf of the Merchant for the sale of Products & Services by way of the provision of a payment aggregation and settlement service ("**Services**").

In providing the Services, the following general steps are involved:

1. The Merchant agrees to sell Products charged in AUD. The customer then chooses to pay by Alipay and/or WeChat Pay;
2. The Alipay and/or WeChat Pay User scans QR code and approves the payment;
3. Payment status is communicated in real time to the Merchant by the Acquirer upon the Acquirer's receipt of confirmation from Alipay and/or WeChat Pay; and

The Acquirer will settle payment funds to the Merchant as agreed below.

SCHEDULE 2 - SERVICE FEE AND SETTLEMENT

Fees

All Fees applicable to the Merchant are set out in the Merchant Application. The Merchant Service Fee ("MSF") is a % rate applied to each Transaction Value. The Merchant has elected in the Merchant Application whether the MSF is to be invoiced on a monthly basis, or deducted from the sums in the account nominated in the Merchant Application before settlement. If Fees are to be invoiced on a monthly basis, the Acquirer will direct debit these from the Bank Account specified on the Merchant Application. The Merchant acknowledges that the MSF will be subject to GST.

Acquirer Settlement Process

The Acquirer will process settlement payments to the Merchant's nominated settlement bank account as specified in the Merchant Application. Settlement to the Merchant is in AUD and is processed T + x (being x Business Days following the Transaction Day). The Merchant shall bear the relevant losses arising from any incorrect information provided in relation to its bank account details or Merchant negligence during payment transaction processing.

Refunds

Merchant

1. If an Alipay User or WeChat Pay User requests and is due a Refund in accordance with a Merchant's after-sale service policy or a Refund is required by applicable law, the Merchant will process the Refund on the terminal using the refund code on the original customer or Merchant receipt.
2. An Alipay User or WeChat Pay User may request a Refund directly through Alipay or WeChat Pay. If after an investigation of the matter Alipay or WeChat Pay deem the Alipay User or WeChat Pay User is due the Refund Alipay or WeChat Pay (as applicable) will credit the User account directly.
3. The Merchant hereby agrees to reimburse the Acquirer for each such Refund and for that purpose authorizes the Acquirer to deduct the amount of each Refund from the Settlement Funds.
4. If the amount of the Settlement Funds is not sufficient to process the relevant Refund, the Acquirer will be entitled to apply the Settlement Funds to the Refund as and when they become available, or invoice the Merchant for the Refund (or any portion thereof).
5. Alipay only accepts and processes Refund instructions if the request for Refund is made within 365 days from the date of the Transaction and only up to the value of the Transaction.
6. WeChat Pay only accepts and processes Refund instructions if the request for Refund is made within 90 days from the date of the Transaction and only up to the value of the Transaction.
7. The Merchant is not permitted to Refund the Alipay User or WeChat Pay User via other methods.
8. Any Merchant Service Fee associated with the Refunded Transaction is not refundable to the Merchant. There is no Merchant Service Fee associated with processing the Refund.

SCHEDULE 3 - TERMS AND CONDITIONS OF AGREEMENT

1. Definitions and interpretation

The following definitions apply in this Agreement unless inconsistent with the context or otherwise specified:

"Agreement" means this agreement, Merchant Application and the Schedules and appendices hereto as may be amended from time to time;

"Affiliate" means:

- i) a director, officer, partner, member, manager, executor or trustee of such person; and
- ii) any person directly or indirectly controlling, controlled by, or under common control with that person. For the purposes of this definition, "control," "controlling," and "controlled" mean having the right to elect a majority of the board of directors or other comparable body responsible for management and direction of a person by contract, by virtue of share ownership or otherwise; and
- iii) a **"Related Body Corporate"** as that term is defined in section 50 of the Corporations Act 2001 (Cth);

"Alipay" is a payment option offered by the Acquirer allowing Alipay Users to use their Alipay account to make purchases of Products;

"Alipay Services" are services provided by the Acquirer to facilitate Alipay payments in connection with Transactions;

"Alipay User" is a customer who has registered as an Alipay User and participates in Alipay payments;

"AML Legislation" means the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (Cth), and all associated regulations;

"AML Obligations" means the obligations (if any) imposed on a "reporting entity" under the AML Legislation with respect to a Transaction;

"Application Form" means the application form submitted by you to us to use our settlement services pursuant to this Agreement.

"Business Day" means a day (other than a Saturday, Sunday or public holiday) on which trading banks are open for general banking business in Sydney, Australia and in Beijing, The People's Republic of China (whichever is applicable in the circumstances). For these purposes, the applicable Business Day is the day in the location where an act is performed or required to be performed e.g. in relation to the day that a Transaction occurs, the applicable Business Day is the Business Day in Sydney (if the Transaction was processed in Australia); in relation to the day that Alipay or WeChat Pay settles a Transaction, the applicable Business Day is the Business Day in Beijing;

"Card" means a:

- (a) credit, debit, charge, purchase or other valid payment card issued by a member or affiliate of a Scheme on which the Scheme's Marks appear;
- (b) a valid payment card capable of acceptance under the eftpos Mark issued by an Australian bank or financial institution;
- (c) any valid payment card issued under any loyalty program;
- (d) any other valid payment card issued by another entity which the Terminal is enabled to accept; or
- (e) any electronic derivation of any of the above.

"Commencement Date" means the first to occur of:

- i) the date on which the Acquirer approves the Merchant Application; and
- ii) the date on which the Acquirer enables QR payments on any of the Terminals used by the Merchant;

"Confidential Information" means all non-public, proprietary or other confidential information, whether in oral, written or other form, including but not limited to: the content and performance of this Agreement, business plans, capitalization tables, budgets, financial statements; costs, prices, and marketing plans, contracts and licenses, employee, customer, Acquirer, shareholder, partner or investor lists, technology, know-how, business processes, trade secrets and business models, notes, sketches, flow charts, formulas, blueprints, and elements thereof, and source code, object code, graphical design, user interfaces and other intellectual property, including that of any customer, Acquirer or other third party (including the interface technologies, security protocol and certificate to any other website or enterprise provided by the Acquirer);

"CST" means China Standard Time (Beijing);

"Data Compromise" means any loss of, unauthorised access to or unauthorised disclosure of any Personal Information of Alipay Users or WeChat Users or any data relating to Transactions held by the Merchant (including data held by the Merchant's employees, agents, sub-contractors and others acting on its behalf);

"Fees" means any fee payable by the Merchant to the Acquirer, as referred to in Item 6 (Fee) of Schedule 1 of the Master Merchant Ts and Cs, and as may be varied from time to time in accordance with that agreement.

"Force Majeure Event" means an event that is beyond the reasonable control of the affected Party including acts of god, fire, computer virus, defect in design of instrumental software, attack by hacker, change in laws or policies, major outages of a telecommunication carrier's network connections, interface incidents of partner banks and financial institutions, gateway incidents of mobile carriers, and governmental authority intervention that results in the seizure or confiscation of Party's systems, in each case to the extent used in or necessary for the provision of the services and only to the extent such event(s) are beyond the control of the affected Party and only for as long as such event(s) persist, and provided the consequence of the event could not have been prevented or avoided by reasonable precautions or by means of alternate workarounds;

"GST" stands for "Goods and Services Tax" and has the meaning given to the term "GST" in the GST Act.

"GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Intellectual Property" means any:

- i) copyright, patent, know-how, domain names, trademarks, trade names, service marks, brand names, corporate names, logos and designs (whether registered or unregistered) and all goodwill associated therewith;
- ii) applications for registration and the right to apply for registration for any of the same; and
- iii) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world (including its application programming interfaces);

"Mark(s)" means trademarks, including registered and common law trademarks, trade names, service marks, logos, domain names and designations owned, licensed or used.

"Master Merchant Ts and Cs" means the master merchant terms and conditions agreement between the Merchant and the Acquirer from time to time.

“Merchant’s Information” means the Merchant’s information recorded in the Merchant Application either online or a hard copy, as may be amended from time to time;

“Merchant Service Fee” or **“MSF”** has the meaning set out in Schedule 2;

“Operating Rules” means the Acquirer’s operating rules outlined in Schedule 4 and otherwise as may be amended from time to time upon notice by the Acquirer to the Merchant;

“Parties” means the Acquirer and the Merchant;

“Payment” means the payment collected by the Acquirer on behalf of the Merchant for each Transaction;

“Personal Information” means information, an opinion or data, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information, opinion or data, collected by a Party during the operation, management or administration of the Service.

“Product” means any and all goods, products and/or services and/or items that the Merchant makes available for sale to any person;

“Prohibited Transaction” means a transaction for the purchase of any of the items listed in Appendix 1;

“Refund” means funds already paid by an Alipay User and/or WeChat Pay User and which is to be returned to the Alipay User and/or WeChat Pay User (as applicable);

“RMB” means Renminbi, the official currency of the People’s Republic of China;

“Services” or **“Acquirer Services”** means the services the Acquirer will provide to the Merchant under this Agreement, as set out in Schedule 1;

“Settlement Funds” means the amount that is credited to the Merchant’s applicable settlement account, which amount is equal to:

- (a) the Transaction Value,
- (b) less any Fees (where the Fees have been agreed to be deducted from the Settlement Funds, as contemplated under clause 5(b) (Payments and Billings) of Schedule 3), and
- (c) less any Refunds;

“Tax” means all governmental, federal, state, provincial, territorial, county, municipal, local or foreign taxes, including but not limited to sales, GST, use, license, excise, good and services, value added, stamp or transfer taxes, duties, imposts, levies, assessments, tariffs, fees, charges or withholdings of any nature whatsoever levied, imposed, assessed or collected by a taxation authority together with all interest, penalties, fines or other additional amounts imposed in respect thereof;

“Terminal” means the Acquirer payment terminal provided to the Merchant and used to process Transactions;

“Terminal Rental Agreement” means the agreement between the Acquirer and the Merchant for rent of the Terminal;

“Transaction” means the approved sale and purchase transaction of a Product between the Merchant and its customer via Alipay or WeChat Pay, and includes a Refund;

“Transaction Day” means the day on which a Transaction occurs or is processed (as applicable);

“Transaction Value” means the amount charged by the Merchant to an Alipay User and/or WeChat Pay User through the Alipay Services and/or WeChat Pay Services;

“Unauthorised Payment” means any payment that has not been authorised by the relevant Alipay User or WeChat Pay User;

“WeChat Pay” is a payment option offered by the Acquirer allowing WeChat Pay Users to use their WeChat Pay account to make purchases of Products;

“WeChat Pay Services” are services provided by the Acquirer to facilitate WeChat Pay payments in connection with Transactions;

“WeChat Pay User” means the individual end user who has completed WeChat Pay’s member registration process for the purpose of opening a WeChat Pay account.

“User” means an Alipay User or WeChat Pay User, as the case requires.

“Valid Tax Invoice” means a tax invoice which complies with legislation applicable to the administration, collection and enforcement of GST.

2. General provisions of interpretation

In the construction and interpretation of this Agreement unless inconsistent with the context or otherwise specified:

(a) references to Background, clauses and Schedules and Appendices are references to the background, clauses and schedules and appendices of this Agreement;

(b) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and also any subordinate legislation issued under, that legislation or legislative provision; a reference to “law” means all laws, codes, guidelines and the like, including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by-laws, rules, regulatory principles and requirements, statutory rules of an industry body, statutory and mandatory codes of conduct, writs, orders, injunctions and judgements in force from time to time;

(c) headings are inserted for convenience only and do not affect the interpretation of this Agreement;

(d) references to “AUD”, “dollars” and “\$” are references to Australian dollars unless expressly stated otherwise;

(e) references to “written” and “in writing” include any means of non-transitory visible representation including email and other electronic means;

(f) references to time are to Australian Eastern Standard Time or to CST (as applicable);

(g) references to any document include all modifications and replacement documents from time to time;

(h) references in this Agreement to “T + [x]” (where [x] is a number) is a reference to the number of Business Days which have elapsed following a Transaction Day e.g. a reference to “T+2” is a reference to the second Business Day immediately following the applicable Transaction Day;

(i) the phrase include, includes or including, or similar phrase does not limit what else might be included; and

(j) if the time for something to be done or happen is a day that is not a Business Day in the place where it is to be done or happen, then the time is extended to the next Business Day in that place.

3. Services

(a) The Acquirer will provide the Merchant certain Services as described in Schedule 1 of this Agreement. The Parties shall perform and comply with their respective responsibilities set forth in this Agreement.

(b) As a pre-requisite to the supply of the Services by the Acquirer under this Agreement, the Merchant must provide the Acquirer with:

- (i) the information requested in the Merchant Application;
- (ii) any other relevant information upon Alipay's and/or WeChat Pay's reasonable request from time to time.

(c) The Merchant grants permission and authorization to the Acquirer and its Affiliates and representatives to verify, receive, exchange and obtain business credit and other information in relation to the Merchant on an on-going basis as a continuing obligation herein and for its AML Obligations (including the circumstance of any renewal of this Agreement). This is an essential term of this Agreement.

(d) Failure of the Merchant to provide the Acquirer with the information required pursuant to clauses 3(a) and (b) of this Schedule 3 upon demand being made by the Acquirer, shall be deemed a breach of this Agreement.

(e) The Merchant shall use the Services supplied under this Agreement solely for the purpose of processing payments from Alipay Users and/or WeChat Pay Users for the supply of Products to such Alipay Users and/or WeChat Pay Users.

(f) The Merchant acknowledges that Alipay and/or WeChat Pay retains the absolute discretion to decline access to, suspend or terminate the provision of Alipay Services and/or WeChat Pay Services to any Merchant or prospective Merchants at any time and without incurring any liability to the Merchant, whether or not the Acquirer has already started permitting the Merchant to use or access Alipay Services and/or WeChat Pay Services. Further, the Acquirer will have no liability to any person in relation to Alipay or WeChat Pay so declining, suspending or terminating.

4. Merchant Obligations

(a) The Merchant shall ensure that the logo of "Alipay" and/or "WeChat Pay" (as applicable) is displayed in parity with all other forms of payment provided by the Merchant on the Terminal where forms of payment are featured for the purchase of good and/or services. The Merchant shall ensure that Alipay and/or WeChat Pay is identified as prominently as other payment forms via physical placement on the Terminal and/or other areas throughout the business premises, such as store window, doors and counter-top signage.

(b) The Merchant shall ensure that Alipay's and/or WeChat Pay's logo and content must be used only for the purpose of indicating acceptance of Alipay and/or WeChat Pay by the Merchant as a form of payment, unless otherwise authorized by Alipay and/or WeChat Pay. The Merchant shall present a truthful description of Alipay and/or WeChat Pay services in accordance with Alipay's and/or WeChat Pay's guidance and introduction from time to time.

(c) The Merchant shall not charge the Alipay User or WeChat Pay Users any fee for using the Alipay Services or WeChat Pay Services or the Services unless agreed by the Acquirer in writing.

5. Payments and Billings

(a) In consideration for the Acquirer providing the Services to the Merchant in accordance with the terms of this Agreement, the Merchant will pay the MSF or any other Fees as set forth in Schedule 2.

(b) The Merchant Application shall specify whether the MSF or other Fees are to be paid at the end of each month or deducted from the sums held in the Merchant's settlement account. In the event that the MSF or other Fees are to be paid at the end of each month, at the end of the month the Acquirer will issue to the Merchant a Valid Tax Invoice showing the MSF or other Fees payable for the immediately preceding month. The Merchant agrees to pay such MSF or other Fees without set-off, counterclaim, withholding or deduction within 5 Business Days of receipt of a Valid Tax Invoice from the Acquirer.

(c) The Acquirer reserves the right to change such fees upon thirty (30) days prior written notice and such change will become effective on the date set out in the notice. If the Merchant does not agree to the changes, then it may terminate this Agreement. If the Merchant continues to use the Acquirer Services to which the Fee applies after the effective date of the change, then the Merchant will be deemed to have accepted the new Fee.

6. Representations and Warranties

Each Party makes the following representations and warranties to the other Party, and acknowledges that such other Party is relying on these representations and warranties in entering into this Agreement:

(a) The Party:

- i) is an independent corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- ii) is properly registered to do business in all jurisdictions in which it carries on business;
- iii) has all licenses, regulatory approvals, permits and powers legally required to conduct its business in each jurisdiction in which it carries on business;
- iv) has the corporate power, authority and legal right to execute, deliver and perform this Agreement and to carry out the transactions and its obligations contemplated herein; and
- v) is entering into this Agreement in its own capacity for its own account and is not acting as a nominee or agent of any other third party.

(b) This Agreement has been duly executed and delivered by the Party and constitutes the valid and binding obligation of the Party, enforceable in accordance with its terms. Except as otherwise stated in this Agreement, no approval or consent of any person or government department or agency is legally or contractually required to be obtained by the Party in order to enter into this Agreement and perform its obligations.

(c) Neither the execution and delivery of this Agreement nor the consummation by the Party of the transactions contemplated herein will (i) conflict with its constitution (or similar corporate document under applicable laws) of the Party or (ii) violate any judgment, decree or order or statute, rule or regulation applicable to the Party.

(d) There is no litigation, proceeding or investigation of any nature pending or, to the Party's knowledge, threatened against or affecting the Party or any of its Affiliates, which would reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement.

(e) Each Party will comply with laws applicable to the operation of its business and provision of Services under this Agreement.

7. Compliance with Law

(a) In order for the Acquirer to satisfy its obligations and to comply with the relevant requirements under applicable laws and regulations, the Merchant shall, upon reasonable request by the Acquirer, share with the Acquirer, information (including transaction information) from time to time. The Merchant authorises the Acquirer to present the relevant information to regulatory authorities and cooperative banks for examination and verification as necessary.

(b) In accordance with its anti-money laundering, anti-fraud, and other compliance policies and practices, the Acquirer may impose reasonable limitations and controls on the Merchant's, or the Alipay Users' and/or WeChat Pay Users' ability to utilize the Service. Such limitations may include: where good cause exists, rejecting payments, or restricting particular individuals from using the Services.

8. Disclaimer

To the extent permitted by law, the Acquirer makes no warranty to the Merchant, Alipay Users or WeChat Pay Users, express or implied, with respect to the Acquirer's Services, whether of merchantability, fitness for any particular purpose, or of any other type or kind whatsoever.

9. Indemnification

The Merchant shall indemnify the Acquirer from and against all actions, claims, demands, liabilities, obligations, losses, costs (including legal fees, expenses and penalties) and interest which is not special, incidental, consequential or indirect, suffered, incurred or sustained by, or threatened against the Acquirer arising out of any breach or violation of this Agreement, or any willful neglect, fraud or dishonesty by the Merchant or any of its Affiliates. The Merchant will be responsible for any breach or violation of this Agreement by the Merchant or any of its Affiliates and indemnifies the Acquirer in full in such case as set forth under this section.

10. Limitation of Liability

Under no circumstances will the Acquirer or its Affiliates be liable under any theory of tort, contract, strict liability or other legal or equitable theory for lost profits, indirect, incidental, special, consequential, exemplary, incidental, or punitive damages, each of which is hereby excluded by agreement of the Parties regardless of whether such damages were foreseeable or whether the Acquirer or any entity has been advised of the possibility of such damages. Notwithstanding anything in this Agreement to the contrary, the Acquirer's aggregate liability, including for claims, expenses, damages or indemnity obligations under or in connection with this Agreement or the Acquirer's Services, shall not exceed the total Fees paid by the Merchant to the Acquirer for the Acquirer Services provided in the six (6) complete calendar months preceding the date of the event giving rise to the claim upon which liability is based. No action regardless of form may be brought by the Merchant against the Acquirer or its Affiliates more than one year after the cause of action has arisen.

11. Intellectual Property

(a) Acquirer's licence to Merchant. The Acquirer owns or has been licensed all right, title and interest in and to the Services, including the rights to all Intellectual Property thereto. Subject to the terms of this Agreement, the Acquirer authorises the Merchant, during the term of this Agreement, to use the Acquirer's Intellectual Property solely for the limited purpose of receiving the Services in accordance with this Agreement. Such authorisation to use the Acquirer's Intellectual Property shall be non-exclusive, non-sub- licensable and non-transferrable, and may be modified or revoked by the Acquirer in writing at any time during the term of this Agreement. The Merchant agrees that use of the Acquirer's Intellectual Property under this Agreement shall not confer any proprietary right thereto in any manner, and the Merchant agrees to take reasonable care to protect the Acquirer's Intellectual Property from infringement or damage and cease all use of such Intellectual Property immediately upon termination of this Agreement.

(b) Merchant's licence to Acquirer. The Merchant owns its marketing materials (including photos), logos and trademarks ("Merchant IP"). The Merchant represents and warrants to the Acquirer that the Merchant IP does not infringe the Intellectual Property of any third party. Subject to the terms of this Agreement, the Merchant authorises the Acquirer, during the term of this Agreement, to use, reproduce, publish, distribute and transmit the Merchant IP solely for the limited purpose of providing the Services or otherwise to perform its obligations contemplated by and in accordance with this Agreement and to refer to the name of the Merchant in the public announcement as one of the partners using the Services. Such authorisation to use the Merchant IP shall be non-exclusive, non-sub-licensable, non-transferrable and royalty-free, and may be modified or revoked by the Merchant in writing at any time during the

term of this Agreement. The Acquirer agrees that use of the Merchant IP under this Agreement shall not confer any proprietary right thereto in any manner, and the Acquirer agrees to take reasonable care to protect the Merchant IP from infringement or damage and cease all use of such Merchant IP immediately upon termination of this Agreement.

12. Data Privacy

Each Party agrees to use any procedures required by law in order to protect the privacy and Personal Information of all individuals whose information they respectively collect, and shall use Personal Information only for the purpose of fulfilling its obligations under this Agreement and for any other purposes permitted by law. Each Party shall take all commercially reasonable steps to ensure that the Personal Information is protected against misuse and loss, or unauthorised access, modification or disclosure and shall promptly notify the other Party any loss of, or any unauthorised disclosure of or access to, the Personal Information. Each Party may retain records of Payment for complying with applicable laws and internal compliance requirements.

13. Tax

All Taxes arising from the implementation hereof shall be for the account of and the liability of the respective Party according to the prevailing taxation law, unless agreed otherwise in writing by the Parties. Notwithstanding anything else contained herein, all amounts payable by the Merchant to the Acquirer under this Agreement shall be free of withholding on account of any Taxes imposed by the relevant taxation authority of the applicable jurisdictions which the Merchant is subject to.

14. Confidential Information

Each Party acknowledges that the Confidential Information of the other is valuable to it and agrees to treat as confidential all Confidential Information received from the other Party in connection with the Services. Neither Party shall disclose such information except to perform its obligations or exercise its rights under this Agreement or as required by law, and in the event such disclosure is required by law, the disclosing Party shall give the other Party prior notice of such disclosure except that a Party does not need to provide such notice where such Party is prohibited by applicable law from providing such notice. Upon termination of this Agreement and the written request of the other Party, each Party shall promptly return or destroy all material embodying Confidential Information of the other.

15. Publicity

Neither Party shall issue any press release or make any public announcement pertaining to this Agreement without the prior written consent of the other Party unless required by applicable laws. However, the preceding limitation shall not be interpreted to prevent the Acquirer from making statements about the Acquirer's aggregate business or about the Service in general in or outside of the jurisdiction where the Merchant is located.

16. Notice

Other than business correspondence in relation to the ordinary operation of the Service, and amendment of any matters listed in Schedule 4 of this Agreement, all notices and other communications required or permitted between the Parties under this Agreement (including changing any terms of this Agreement) will be in writing and shall be sent by email, express courier or facsimile to the contact details as provided by the Parties. Notice shall be effective upon receipt. Receipt will be deemed to have been made:

- (a) if notice is sent via email correspondence, on the date and time which it enters into the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee);
- (b) if notice is sent by express courier, on the date set out in the courier's recording delivery; and
- (c) if notice is sent by facsimile machine, on the date and time set out in the sending Party's confirmation of successful transmission.

17. Term and Termination

(a) This Agreement will commence on the Commencement Date and unless otherwise agreed in writing, shall continue until terminated pursuant to this clause 17.

(b) A Party may terminate this Agreement immediately by notice in writing (i) for breach if such breach is incapable of remedy, or capable of remedy but not remedied upon 30 days' notice informing the other Party of the breach and requiring that it be remedied or (ii) if the other Party becomes subject to bankruptcy, insolvency, reorganization, winding up or similar dissolution procedures.

(c) Notwithstanding any other provision of this Agreement to the contrary, the Acquirer may terminate this Agreement immediately, if the Acquirer determines, in its sole discretion, that compliance with this Agreement would cause the Acquirer or any of its Affiliates to violate or potentially violate any law, contract or compliance policy of the Acquirer or any of its Affiliates.

(d) The Parties agree that the Acquirer may terminate this Agreement immediately on notice in writing to the Merchant in the event that the Terminal Rental Agreement (if any) terminates or expires for any reason.

(e) Upon termination of this Agreement, the respective obligations of the Parties set out in this Agreement shall cease other than obligations and rights of the Parties under Clauses 10, 11, 12, 13, 14, 15 and 16 of this Schedule 3 and those provisions which by their terms are intended to survive (including payment obligations already accrued).

(f) Any amounts due and payable under this Agreement shall continue to be due and payable in full.

18. Force Majeure

A Party will not be liable for any failure or delay in its performance under this Agreement due to a Force Majeure Event. For clarity, the foregoing does not apply if the Force Majeure Event is caused by the Party seeking to rely on the Force Majeure Event. However, a Force Majeure Event will not excuse a Party's failure to pay any outstanding amounts due and payable under this Agreement.

19. Governing Law

This Agreement is governed by and will be construed in accordance with the laws of New South Wales. Subject to, and without limiting, clause 20 (Dispute Resolution) of Schedule 3, the Parties submit to the non-exclusive jurisdiction of the New South Wales courts and the courts hearing appeals therefrom.

20. Dispute Resolution

(a) If any dispute arises between the Parties concerning this Agreement (including its breach, validity or termination), then, except as expressly provided in this Agreement, the Parties shall endeavour to resolve the dispute by consultation and negotiation between them.

(b) If a dispute is not resolved within 10 Business Days of written notice by one Party to the other of the dispute (or such further period agreed in writing between them), either Party may refer the dispute to mediation. The mediator shall be agreed between the Parties within 10 Business Days of written notice of referral by the referring Party to the other or, failing agreement, will be an accredited mediator appointed by the Chair of the Resolution Institute ("RI"). The Parties will abide by the mediation rules of RI in seeking to resolve the dispute by mediation. The Parties agree that:

- (i) The mediator will be deemed to be not acting as an expert or as an arbitrator;
- (ii) The mediator will determine the procedure and timetable for the mediation;
- (iii) The cost of the mediation will be shared equally between the Parties to the dispute; and
- (iv) The mediation will be held in Sydney, Australia or such other place as may be agreed between the Parties.

(c) Step 3: arbitration. If the dispute is not resolved within 4 weeks (or such other period as the Parties agree) of the appointment of the mediator or if either Party does not wish to have the dispute mediated, then either Party may refer the dispute to the Chair of the RI for the appointment of a graded arbitrator who will arbitrate the matter in accordance with the Commercial Arbitration Act (1990) (Cth). Unless the Parties agree otherwise, the place of arbitration will be Sydney, New South Wales. The outcome of the arbitration will bind the Parties.

(d) Urgent relief. Nothing in this clause 20 prevents a Party from obtaining urgent interlocutory relief.

20. Costs and Expenses

Except as expressly set forth in this Agreement, each Party shall be solely responsible for all costs and expenses incurred by it in connection with providing or receiving the Services.

21. Entire Agreement

This Agreement and all schedules and appendices hereto and thereto, is the entire agreement between the Parties with respect to the subject matter and supersedes any previous agreements and understandings.

21. Assignment

Except as set out in this Agreement, this Agreement and the rights and obligations of any Party to this Agreement may not be assigned, transferred, subcontracted or delegated by operation of law or otherwise. The Acquirer may assign all or any of its rights under this Agreement.

22. No Implied Waiver

The waiver by either Party of a breach or default of any provision of this Agreement by the other Party, or the failure on the part of either Party to exercise any right or privilege hereunder, shall not be construed as a waiver of any subsequent breach or default by the other Party, or as a waiver of any such provision, right, or privilege hereunder.

23. Relationship

Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, agency, fiduciary or employment relationship among or between any of the Parties.

24. Severability

If any provision of this Agreement is not enforceable, it will be severed and the remaining provisions remain valid and enforceable.

25. Participation of Acquirer's Affiliates

The Acquirer may delegate the satisfaction of its obligations under this Agreement to any of its Affiliates, provided that the Acquirer remains responsible to the Merchant for the performance of its obligations under the Agreement.

26. General

This Agreement may be executed in any number of counterparts and all the counterparts when taken together will constitute one agreement. Each Party may enter into this Agreement by executing a counterpart. The Parties acknowledge that this Agreement may be executed by an exchange of facsimile and/or scanned and emailed PDF copies or other electronic transmission, and execution of this Agreement by that means is valid and sufficient execution.

27. Changes to Agreement

The Acquirer may immediately vary this Agreement if required by, or in order to comply with, any law, or in connection with, or as a result of, any changes to any laws, provided that it provides the Merchant with written notice of such variations as soon as is reasonably practicable after making the variation. The Acquirer will provide the Merchant with

at least 30 days' notice if the Acquirer introduces or increases a Fee (other than a government charge or fee payable to a Scheme) and the Merchant's continued use of the settlement services will be deemed to be its acceptance of such changes. For any other changes (including changes to interest rates and standard fees and charges) the Acquirer will notify the Merchant as soon as reasonably practicable. Where required by law, the Acquirer will notify the Merchant about any new or changes to a government charge in accordance with the applicable law. The Acquirer may also update the list of prohibited or restricted products set out in Appendix 1 at any time. Notice of any changes may be given by the Acquirer pursuant to clause 16 or by uploading details of the amendment or variation on the website www.smartpay.com.au.

Otherwise, this Agreement can be changed only by a written agreement signed by the Parties.

SCHEDULE 4 - ACQUIRER OPERATING RULES

These Acquirer Operating Rules contain an explanation of the Acquirer payment service and set forth the roles and responsibilities of the participants in the Service.

1. Responsibilities of the Acquirer

Subject to payment by the Merchant of the fee specified in Schedule 2 and compliance with the other terms of this Agreement, the Acquirer will use reasonable commercial efforts to perform the Services as follows:

(a) The Acquirer will make a QR code available via the Terminal (which is rented or purchased separately to this Agreement) to collect payments from Alipay Users and/or WeChat Pay Users .

(b) The Acquirer shall complete on schedule, the formalities for the outward settlement (in AUD) of the amounts payable by it, as agreed under this Agreement.

(c) If the Acquirer enters into bankruptcy or liquidation, the amounts payable to the Merchant shall not be incorporated into the scope of the bankruptcy or liquidation as part of the bankrupted or liquidated assets, and the Merchant shall have the right to collect such amounts in accordance with applicable law and procedure.

2. Responsibilities of Merchant

(a) The Merchant shall use the Services only for its own account, for its own business purposes and shall not obtain the Services in the name of the Merchant for any other party, or make use of the payment interface provided by the Acquirer for performing any commercial or non-commercial services for other websites or enterprises.

(b) The Merchant represents it is solely liable for the complaints, goods rejections, and disputes arising out of the illegal, false, outdated or incomplete transaction information, defects and poor quality of Products.

3. Disputes

(a) Rules for Unauthorised Payment.

i) The Merchant agrees that if the Acquirer determines in its sole discretion that certain features of the Services may be subject to high risk of Unauthorised Payment or fraudulent Transaction, the Acquirer may, from time to time, suspend or terminate, with reasonable notice, the provision of such part of the Services, including adjusting the types, issuing banks and payment limit (whether per Transaction or per day) of the payment method that Alipay Users or WeChat Pay Users will be able to use to complete the Payment from time to time.

ii) In any single calendar month, if the accumulative amount of Unauthorised Payments submitted by a Merchant exceeds (i) RMB 5,000 and (ii) 1/100,000 of the total Transaction Value of Transactions submitted by a Merchant, the Acquirer may procure that the relevant Merchant cooperates with Alipay and/or WeChat to mitigate the risks of the relevant Transactions.

iii) In the event that the Merchant fails to adopt any precautionary measure requested by Alipay or WeChat Pay within 5 Business Days of receipt of Alipay's or WeChat Pay's notice, the Acquirer may exercise its right of termination or suspension set out in this Agreement.

iv) In the event that:

(A) the Acquirer reasonably suspects that a Merchant has breached or defaulted on any material term of this Agreement;

(B) any of the events described in Clauses 3(a) (i) – (iii) above occurs in relation to the Merchant for each of three (3) consecutive months;

(C) the accumulated amount of Unauthorised Payments submitted by the Merchant exceeds (i) RMB 50,000 and (ii) 1/10,000 of the total Transaction Value of Transactions submitted by the Merchant in each of two (2) consecutive months; or

(D) the Acquirer reasonably suspects that the Merchant has suffered a Data Compromise and the Acquirer determines that such event may pose significant risks to Alipay's or WeChat Pay's systems, the Acquirer may immediately terminate or suspend by written notice (including by email) to the Merchant the Services provided to the Merchant.

If an Alipay User or WeChat Pay User claims that an unauthorised payment or an otherwise fraudulent Transaction has been submitted by the Merchant the Merchant must comply with the following rules:

a) Transaction Evidence. The Merchant must provide the Acquirer transaction evidence within 5 Business Days upon the Acquirer's request.

b) Reimbursement. If the Acquirer does not receive the transaction evidence for the unauthorised payment from the Merchant then the disputed amount will be debited from the Merchant's settlement account.

c) Reimbursement Obligation. Provided transaction evidence has been requested, the Acquirer may, having made due enquiry of the Alipay User or WeChat User, determine to reimburse an Alipay User or WeChat User in the event of any Unauthorised Payment. The Merchant agrees to indemnify and hold Alipay and WeChat Pay harmless for the amount to be agreed between the Merchant and Alipay or WeChat Pay (each acting reasonably) reimbursed to the Alipay User or WeChat User. For the avoidance of doubt, Alipay or WeChat Pay will not be entitled to set off, withhold settlement of or deduct such sums against any monies and liabilities of Alipay or WeChat Pay in accordance with this Schedule.

The Merchant agrees that, if Alipay or WeChat Pay reasonably believes that a number of Transactions are Prohibited Transactions, Unauthorised Payments or otherwise fraudulent Transactions, it will on reasonable prior written notice from Alipay or WeChat Pay, provide access to Alipay or WeChat Pay to the Merchant's premises during normal business hours for the purpose of Alipay or WeChat Pay conducting onsite reviews of the Merchant's risk management capabilities and the effectiveness of the Merchant (as applicable) in rejecting Prohibited Transactions, Unauthorised Payments or otherwise fraudulent Transactions.

4. Acquirer Payment Policies

(a) Responsibilities for Merchant Service Fee

The Merchant is fully responsible for the payment of any Merchant Service Fees for using the Service.

(b) Acquirer as Payment Method

The Merchant shall not restrict their customers in any way from using Alipay and/or WeChat Pay as a Payment method at the checkout at any of the sales channels, including establishing or changing a minimum or maximum purchase amount for customers using Alipay and/or WeChat Pay.

(c) Prohibited Products

The Merchant fully acknowledges that the Acquirer must not provide Services for any transaction which is prohibited by applicable laws including PRC laws or violates the Acquirer's internal policy. The Merchant guarantees that the Products sold to Alipay Users and WeChat Pay Users through a Terminal shall not contain articles prohibited or restricted from being sold to customers under the applicable laws, including the products listed in Appendix I hereto, which may be updated by the Acquirer from time to time.

(d) Services for Merchant's Own Use

The Merchant shall use the Services hereunder to collect Payment only for the Products in connection with its business as pre-approved by the Acquirer.

(e) Storage of Transaction Information

The Merchant shall maintain evidence for each Transaction (for example, evidence of delivery) to justify its authenticity for five years after the completion of the Transaction, for the Acquirer's review, provided that the Acquirer shall advise the Merchant of the names of such cooperative banks and regulatory authorities to which such information is presented by the Acquirer to the extent that it is legally and practically permitted.

(f) Downtime

The Acquirer's website, Alipay's website, WeChat Pay's website, the terminal QR functionality and the Alipay platform and WeChat Pay Platform are subject to maintenance, repairs, inspections, modifications and improvements, during which the Services may not be available. Such scheduled downtime is subject to change. As to any outage of the Services resulting therefrom, such outage shall not constitute a breach of contract by the Acquirer.

APPENDIX 1 PROHIBITED AND RESTRICTED PRODUCT LIST

1. Illegal political audio visual products and publications
2. Illegal political program channels
3. State secret documents and information
4. Pornographic and vulgar audio visual products, channels and publications
5. Pornographic and vulgar erotic services
6. Gambling devices and accessories
7. Lottery
8. Gambling service
9. Narcotics and related accessories
10. Weapons of all types (including daggers, firearms and accessories), replica weapons, ammunitions and explosives)
11. Military or police equipment
12. Illegally obtained proceeds or properties as result of crime
13. Poisonous or hazardous chemicals prohibited by Applicable Law and/or the laws of the People's Republic of China
14. Batons and electric batons
15. Lock picking tools and accessories
16. Anesthetic, psychotropic or prescription medicine prohibited by the People's Republic of China; illegal unregistered medicine
17. Fetal gender determination
18. Aphrodisiac
19. Medical services, including medical consulting, hypnotherapy, plastic surgery
20. Hacking services or accessories
21. Malwares
22. Software or services that may jeopardize the reputation and goodwill Alipay and/or WeChat Pay or any of its Affiliates or related party
23. Illegal publication of certificates issuing or carving of stamps
24. Crowd funding
25. Video chatting services
26. All religious websites, publication or accessories
27. Online cemeteries and ancestor worshipping
28. Sales of personal information (e.g. identity card information)
29. Espionage equipment and accessories
30. Services or products that infringe on personal privacy (e.g. online activity monitoring)
31. Pyramid schemes and multi-level marketing
32. Gold investment
33. Cash disbursement from credit funding sources (e.g. credit cards)
34. Counterfeit currency
35. Illegal sale of financial information (e.g. bank accounts, bank cards)
36. Stock and securities
37. Mutual Funds
38. Insurance products and platforms
39. Financial products and services
40. Rebate or cashback services
41. Software or products related to trading of financial products and information
42. Single-purpose prepaid cards (including gift cards and other stored value cards)
43. Illegal or un-registered fund-raising activities
44. Foreign exchange services
45. Peer to peer (P2P) lending services

46. Payment by instalments service
47. Trading in invoices issued within the Peoples' Republic of China
48. Trading or sale of virtual currencies (e.g. Bitcoin, Litecoin)
49. Satellites and antennas
50. Archaeological and cultural relics
51. Trading or distribution of currency (both RMB and foreign currencies)
52. Counterfeit or replica food products
53. Online sale of tobaccos and cigarettes
54. Fireworks and firecrackers
55. Crude oil
56. Human organs
57. Surrogacy services
58. Services to facilitate plagiarism and examination fraud
59. Protected species
60. Smuggled goods
61. Sales or distribution of event tickets without license (e.g. Olympic Games or World Expo tickets)
62. Seeds
63. Real estates
64. Charitable Organizations
65. Auction sites and services
66. Pawn services
67. Lucky draw
68. Sale of animals, plants or products with contagious and hazardous diseases
69. Sale of animals, plants or products originating from areas declared with an epidemic outbreak of contagious diseases
70. Services or products facilitating unlawful public gathering