

SMARTPAY MASTER MERCHANT TERMS & CONDITIONS

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BACKGROUND

- A. Smartpay rents, sells and distributes EFTPOS Equipment and certain payment facility services in Australia and New Zealand.
- B. The Merchant wishes to rent and/or purchase EFTPOS Equipment and acquire related services that are supplied by Smartpay.
- C. The parties have entered into this Agreement to record the terms and conditions upon which Smartpay agrees to provide to the Merchant, and the Merchant agrees to acquire, the Equipment and/or the Services from Smartpay, on the terms and subject to the conditions set out in this Agreement.

AGREEMENT IN BRIEF

The parties agree that:

- 1. Smartpay will provide to the Merchant the Equipment and Services for use within the Merchant's business in accordance with this Agreement.
- 2. The Merchant will use the Equipment and Services within its business on the conditions set out in this Agreement.
- 3. The Merchant will pay Smartpay all Fees when due and otherwise on the terms set out in this Agreement.
- 4. This Agreement is comprised of this document, the Application Form, Schedule 1 (*Key Details*), Schedule 2 (*Dictionary*), Schedule 3 (*General Terms*) and Schedule 4 (*Smartpay Merchant Facility Terms*).

SCHEDULE 1 - KEY DETAILS

Item 1	Smartpay (we)	<p>Name: Smartpay Australia Limited</p> <p>ABN: 79 120 473 823</p> <p>Address: Level 2, 117 York Street, Sydney NSW 2000</p> <p>Email: merchantservices@smartpay.com.au</p> <p>Contact person: Acquiring Manager</p>
Item 2	Merchant (you)	The party that has submitted the Application Form to Smartpay requesting access to the Smartpay Merchant Facility.
Item 3	Commencement Date Clause 2.2	<p>The first to occur of:</p> <ul style="list-style-type: none"> a. the date on which we open the Smartpay Customer Account; b. the date on which we process the first Transaction for you; and c. the date that is 7 (seven) days after your Equipment is first shipped to the Delivery Address.
Item 4	Term and renewal Clause 2.1	<p>Initial Term: If this Agreement has a fixed term, the Initial Term is as set out in the Application Form.</p> <p>Renewal Term: If this Agreement has a fixed term, this Agreement will automatically renew for successive periods of 12 (twelve) months unless terminated 30 (thirty) days prior to the end of the then-current term</p>
Item 5	Termination notice Clause 16	30 (thirty) days (subject to clause 16 (<i>Termination</i>))
Item 6	Fee Clause 6.2(a) Clause 6.2 Clause 16.6	<p>Initial set up Fee: If this Agreement has a fixed term, then the initial set up fee is waived. If this Agreement does not have a fixed term, the fee is as set out in the Application Form and will be invoiced to you if you terminate the contract within the first 12 (twelve) months of this Agreement.</p> <p>Ongoing Fees: As set out in the Application Form and may be comprised of a Monthly Rental Fee and/or Merchant Service Fee and/or Accessory Fee and any other applicable Fees.</p> <p>Cancellation Fee: If this Agreement has a fixed term, then the cancellation Fee is as set out in the Application Form and is charged if the Agreement is terminated during the Initial Term in the circumstances set out in clause 16.6 (Cancellation Fee). If this Agreement does not have a fixed term, there is no cancellation Fee.</p>
Item 7	Products & Services Clause 3.3	The products and services we will provide to you, as set out in the Application Form.

SCHEDULE 2 - DICTIONARY

1. DICTIONARY

1.1 Definitions. In this Agreement:

Accessory Fee means the fees, if any, for or in relation to consumables and/or accessories for use with or in relation to any Equipment and any related costs (including postage fees) and as may be varied from time to time in accordance with this Agreement.

Alipay WeChat Pay Merchant Agreement means the terms and conditions governing the use of the Alipay WeChat Pay Service, as set out on the Website or otherwise provided to you, as amended from time to time.

Alipay WeChat Pay Service means transaction payments via Alipay and/or WeChat Pay.

Application Form means the application form submitted by you to us pursuant to clause 4.1 (Application Form and you must provide information) of Schedule 3 for access to the Smartpay Merchant Facility.

Associate in relation to a party means the employees, officers, directors, contractors and agents of that party.

Australian Consumer Law means Schedule 2 of the Competition and Consumer Act 2010 (Cth).

Authorised Signatory has the meaning given in clause 5.1 (Authorised Signatories' authority) of Schedule 3.

Business means the ordinary business conducted by you as described in the Application Form or notified to us from time to time in accordance with this Agreement.

Business Day means a day other than a Saturday, Sunday or day which is a bank holiday or public holiday in the State of New South Wales.

Card(s) 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.

Cardholder means the person to whom a Card has been issued or a person who is authorised to use a Card.

Chargeback refers to a transaction that is debited to the Settlement Account as a result of any of the circumstances set out in clause 13.1 (Chargebacks) of Schedule 4.

Commencement Date means the date as determined in accordance with Item 3 (Commencement Date) of Schedule 1.

Communications Service means all facilities, devices and network connections that allow for the capture and switching of Transactions via the EFTPOS System by use of either an analogue or digital mobile telecommunication service, broadband internet, WiFi service or similar telecommunication services.

Consumer has the meaning given in clause 14.1 (You are not a Consumer) of Schedule 3.

Credit Card means a device that can be used for purchasing goods or services on credit in Australia (irrespective of whether the device is issued in or outside Australia) and includes devices issued by Visa, Mastercard, American Express, Diners Club and China Union Pay.

Customer Support means our customer support team who can be contacted via the methods set out on our Website.

Delivery Address means the address specified in the Application Form as the address to which Equipment to be supplied by us pursuant to this Agreement is to be delivered.

Direct Debit Request means the direct debit request set out in the Application Form and any other relevant form (if applicable) and signed by you, as amended from time to time.

EFTPOS System means the process whereby, pursuant to instructions transmitted through a Terminal, an electronic funds transfer takes place between a Cardholder's bank account and your Linked Bank Account:

- (a) in relation to goods or services supplied or cash made available by you to the Cardholder; or
- (b) in relation to a refund in respect of goods and services supplied by you to the Cardholder.

EPAL means eftpos Payments Australia Limited ABN 37 136 180 366.

Equipment means the Terminal, any related equipment, accessories and any Software.

Fee means any fee payable by you to us, as referred to in Item 6 (Fee) of Schedule 1 and as may be varied from time to time in accordance with this Agreement.

Fee Account has the meaning given in clause 7.3 (You must maintain a linked Bank Account) of Schedule 3.

Financial Institution has the meaning given in clause 8.3 (When we will charge your account) of Schedule 3.

GST means any tax on the supply of any goods, services, real or personal property or any similar tax imposed under the GST Law.

GST Law has the same meaning given to the term "GST Law" in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Initial Term has the meaning given in clause 2.1 (Term and renewal) of Schedule 3.

Intellectual Property Rights means patents, rights in inventions, works of authorship, data, designs, databases, know-how, trade secrets, confidential information, trademarks, trade, business and domain names, logos, get-up and goodwill, along with copyrights, moral Rights and any other intellectual property and proprietary rights, in each case whether registered or unregistered in any jurisdiction.

Invalid Transaction has the meaning given in clause 11.7 (Invalid Transactions) of Schedule 4.

Linked Bank Account has the meaning given in clause 7.1 (You must maintain a Linked Bank Account) of Schedule 3 and includes any Fee Account and Settlement Account.

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

Merchant Service Fee or Merchant Fee means the fee payable by you to us for receipt of the applicable Smartpay Service, referred to in the Application Form and as may be varied from time to time in accordance with this Agreement.

Monthly Rental Fee means the fee for the rental, service and swap out (in each case, as applicable) payable by you to us to hire the Equipment from us (as applicable) as set out in the Application Form and as may be varied from time to time in accordance with this Agreement.

MOTO stands for "mail or telephone order" and means an order for goods or services received by mail, telephone, facsimile or internet.

MOTO Terms and Conditions means the terms and conditions governing the use of the MOTO service as set out at <https://www.merchantwarrior.com/terms>, as amended from time to time.

PPSA means the Personal Property Securities Act 2009 (Cth).

PPSR means the register established under the PPSA.

Receipt means a receipt including the following information about a Transaction:

- (a) amount;
- (b) date;
- (c) type of Transaction;
- (d) facility or facilities being debited or credited;
- (e) information to enable us to identify you and the Transaction (but no information that identifies the Cardholder's name or address);
- (f) time;
- (g) location of Terminal or other identifying information of the Terminal; and
- (h) reference number.

Refund means the refunding of a previously processed Transaction back onto the previously processed Card.

Renewal Term has the meaning given in clause 2.1 (Term and renewal) of Schedule 3.

Replacement Cost means the cost of replacing the Equipment as reasonably determined by us and notified to you from time to time.

Scheme means the Mastercard, Visa, American Express, UnionPay, Diners Club, Discover, JCB and EPAL card schemes and any other similar schemes provided that we are a member of or facilitate transactions in relation to that scheme.

Security Interest has the meaning given to it in the PPSA.

Settlement Account has the meaning given in clause 7.3 (You must maintain a linked Bank Account) of Schedule 3.

Services or **Smartpay Services** means the products and services that Smartpay will provide to you pursuant to this Agreement, as referred to in Item 7 (Products & Services) of Schedule 1.

Smartpay Customer Account has the meaning given in clause 4.1 (Must have a Smartpay Customer Account) of Schedule 3.

Smartpay Merchant Facility means the facility under which we provide you with merchant acquiring and transaction processing services in accordance with this Agreement.

Software means all software developed by or for Smartpay for use in or with the Terminals, consisting of a set of instructions or statements in machine-readable medium and any enhancement, modification, update or new release of that software or part thereof.

Surcharge has the meaning given in clause 14.1 (Smartcharge and Surcharges) of Schedule 4.

Term means the Initial Term and any Renewal Term.

Terminal(s) means the electronic terminal or terminals supplied by us through which instructions may be given for the transfer of funds using the EFTPOS system.

Transaction means an electronic funds transfer initiated in connection with a Cardholder using a Card or information from a Card.

Updates means all corrections for defects, fixes, enhancements, refinements, changes, extensions, alterations, variations or additional minor functionality, made to the Software from time to time.

User Guide means the procedures and user guide(s) that set out (amongst other things) instructions on how to set up the Equipment and instructions on how to operate the Terminals, as provided and updated by us from time to time.

Valid Transaction is any transaction that is not an Invalid Transaction and is approved by us.

Website means the internet site at the URL www.smartpay.com.au or any other site operated by the us or our related bodies corporate from time to time.

- 1.2 **Interpretation.** In this Agreement, unless the context requires otherwise: (a) a reference to a clause, schedule or exhibit is to a clause, schedule or exhibit of or to this Agreement, which form part of this Agreement; (b) a reference to any gender includes all genders; (c) in calculating any period of time commencing from a particular day, the period commences on the following day and the following day counts as part of that period; (d) the rule of interpretation which sometimes requires that a document be interpreted to the disadvantage of the party which put the document forward, does not apply; (e) a reference to this Agreement or any other agreement, arrangement or document, includes any variation, novation, supplementation or replacement of them; (f) where an expression is defined anywhere in this Agreement, it has the same meaning throughout; (g) headings and sub-headings are for convenience of reference only and do not affect interpretation; (h) the phrase include, includes or including, or similar phrase does not limit what else might be included; (i) 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; (j) 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, judgements, Australian generally accepted accounting principles and industry-wide non-statutory rules or obligations in force from time to time; (k) a reference to dollars or \$ is to an amount in Australian currency; (l) the singular includes the plural and vice versa; (m) a reference to any party to this Agreement or to any other document or arrangement, includes that party’s legal personal representatives, substitutes (including any person taking by novation), successors and permitted assigns; (n) a reference to a person includes a body corporate, partnership, joint venture, incorporated or unincorporated association, authority, State, government, or government or quasi-government body, and vice versa.

SCHEDULE 3 - GENERAL TERMS

1. STRUCTURE

- 1.1 Structure of this Agreement. This Agreement consists of the following parts:
- (a) Schedule 2 (*Dictionary*);
 - (b) Application Form (including Personal Information Collection Statement);
 - (c) Schedule 1 (*Key Details*);
 - (d) Service Schedules;
 - (e) Schedule 3 (*General Terms*);
 - (f) Schedule 4 (*Smartpay Merchant Facility Terms*);
 - (g) Privacy Policy.
- 1.2 Precedence of documents. If there is an consistency between the documents set out in clause 1.1 (Structure of this Agreement) above, the document listed first in that clause will prevail to the extent of the inconsistency such that the inconsistent provision in the document lower in the order of priority will be read down or, if necessary, severed to the extent necessary to resolve the inconsistency. Where 2 (two) documents have the same priority in that clause, then priority will be given to the document that is later in time.

2. TERM

- 2.1 Term and renewal. This Agreement will start on the date that we confirm (usually by written letter) to you that your Application Form has been received and is accepted by us, and will continue for the period set out in the Application Form (if any) unless earlier terminated in accordance with this Agreement ("**Initial Term**"). Where the Initial Term is a fixed period, then this Agreement will automatically renew for successive periods equal to the period set out in Item 4 (*Term and Renewal*) of Schedule 1 (each a "**Renewal Term**") unless either, a party terminates this Agreement by notice in writing to the other party no less than 30 (thirty) days prior to the expiry of the Initial Term or the then-current Renewal Term (as applicable), or a party otherwise terminates this Agreement in accordance with its terms.
- 2.2 Commencement of services. Notwithstanding clause 2.1 (*Term*) above, we will start providing the services to you on the Commencement Date as determined in accordance with Item 3 (*Commencement Date*) of Schedule 1.

3. SERVICES

- 3.1 Smartpay to provide Services to you. In consideration of the payment of the Fees, Smartpay agrees to provide to you, the Services on the terms and subject to the conditions set out in this Agreement.
- 3.2 Right to reject certain Transactions.
- (a) You acknowledge and agree that Smartpay is subject to laws (such as relevant anti-money laundering laws), which may prohibit Smartpay from entering into or concluding Transactions involving certain persons. You agree that Smartpay may decline to enter into or conclude Transactions involving such persons in compliance with such laws, and will incur no liability from any action Smartpay takes to comply with such laws. Further, you agree that Smartpay may delay, block or refuse to make or process a payment or Transaction if Smartpay believes on reasonable grounds that making that payment or Transaction may breach any law in any other country, and Smartpay will have no liability in taking such action. Smartpay will, as soon as reasonably practicable and at all times subject to the requirements of the relevant laws, notify you of this action.
 - (b) You declare and undertake that the payment of monies by Smartpay in accordance with any instructions given by you will not breach any laws.
- 3.3 Services. Smartpay will use best endeavours to provide the Services selected by you on the Application Form.
- 3.4 MOTO. Where you have applied, and have been approved, to use the MOTO services, you acknowledge that you have read the MOTO Terms and Conditions and agree to be bound by them.
- 3.5 Alipay WeChat Pay. Where you have applied, and have been approved, to use the Alipay WeChat Pay Services, you acknowledge that you have read the Alipay WeChat Pay Merchant Agreement and agree to be bound by it.

4. YOUR SMARTPAY CUSTOMER ACCOUNT

- 4.1 Must have a Smartpay Customer Account. In order to use the Smartpay Services you must have an account with us (your “**Smartpay Customer Account**”). You must provide us with any information we reasonably require to open the account and to set up the Smartpay Merchant Facility for you, including the information requested on the Application Form.
- 4.2 We may refuse to open an account. When you submit an Application Form to us, you make an offer to us for us to set up a Smartpay Customer Account for you to enable you to access and operate the Smartpay Merchant Facility. Subject to law, we may in our sole and absolute discretion agree or refuse to open a Smartpay Customer Account and we may agree or refuse to provide the Smartpay Merchant Facility to you, and in each case, we are not required to provide reasons for doing so.
- 4.3 Assumption that information is current and correct. We are entitled to assume that all of the details that you have provided to us pursuant to the Application Form and otherwise pursuant to this Agreement are current and correct. If there are any changes to your details, you must notify us of those changes in accordance with clause 9 (Changes to your details) of Schedule 3. We will not be liable for any loss or damage suffered by you or any other party as a result of any such information being out-of-date or incorrect.

5. SMARTPAY CUSTOMER ACCOUNT - AUTHORISED SIGNATORIES

- 5.1 Authorised Signatories’ authority. You must nominate at least one individual (“**Authorised Signatory**”) to be your key contact person and who is authorised to access, use and control your Smartpay Customer Account. You acknowledge and agree that: (a) the Authorised Signatories nominated by you from time to time are authorised by you to access and control your Smartpay Customer Account; (b) we are hereby permitted to discuss the details of your Smartpay Customer Account and disclose information about your account with your Authorised Signatories.
- 5.2 Initial and subsequent Authorised Signatories. The initial Authorised Signatories are the individuals nominated as such on and who sign the Application Form. Subject to clause 5.4 (*Accessing your account*) below, you may add or remove an Authorised Signatory by notifying us in writing in such form as required by us from time to time. You must have at least one Authorised Signatory at all times.
- 5.3 You are responsible for Authorised Signatories. You must ensure that all Authorised Signatories comply with this Agreement and you acknowledge and agree that you are responsible for all acts of Authorised Signatories and any other users of the Equipment and all acts and omissions and breaches by an such persons will be deemed to be your act, omission or breach (as the case requires).
- 5.4 Accessing your Smartpay Customer Account. If you have indicated on the Application Form that the “Administration Authority” is:

- (a) “any to sign”, then each Authorised Signatory is separately entitled to exercise your rights under this Agreement, in accordance with this Agreement.
- (b) “any two to sign”, then any combination of 2 (two) Authorised Signatories are jointly entitled to exercise your rights under this Agreement, in accordance with this Agreement.

Notwithstanding the foregoing, if you have nominated more than one Authorised Signatory at any time, then 2 (two) Authorised Signatories are required to authorise the following:

- (a) any addition or removal of an Authorised Signatory;
- (b) the closure of the Smartpay Merchant Facility;
- (c) any change to your Smartpay Customer Account.
- 5.5 We can remove Authorised Signatory. We will remove an individual as an Authorised Signatory if we have been notified or we reasonably believe that they are deceased or mentally incapacitated, or that the individual is no longer authorised to act as an Authorised Signatory. We will not be liable to any person as a result of such removal.

6. FEES

- 6.1 Fees will be debited. All Fees that are payable by or owed to you will be recorded in your Smartpay Customer Account and debited or credited (as required) to your applicable Linked Bank Account(s). See Schedule 4 (*Smartpay Merchant Facility Terms*) for more information about your funding requirements for your Linked Bank Accounts.
- 6.2 Fees. The following Fees will apply:
- (a) Initial set up Fee. A Fee (as referred to in Item 6 (Fee) of Schedule 1) to open and set up your Smartpay Customer Account.
 - (b) Merchant Service Fee. Merchant Service Fees, in consideration of your use of the Smartpay Merchant Facility and any other Services nominated by you in the Application Form. You acknowledge and agree that you have received a copy of our Fees with or within the Application Form.
 - (c) Monthly Rental Fee. Monthly Rental Fees, in consideration of your rental of Equipment from us (if applicable).
 - (d) Cancellation Fee. Cancellation Fee (as referred to in Item 6 (Fee) of Schedule 1) to cancel your Smartpay Customer Account.
 - (e) Accessory Fee. Accessory Fee, in consideration of any consumables and/or accessories acquired by you for use with or in relation to any Equipment and any related costs (including postage fees).
- 6.3 Changes to Fees. We may change our Fees (including introducing new Fees) from time to time by giving you at least 30 (thirty) days' written notice and such change will become effective on the date set out in the notice. There is no maximum limit for the amount of Fees we may impose however, we will only change our Fees to the extent permitted by, and subject to, any requirements of the law. If we change our Fees and you do not agree to the changes, then you may terminate this Agreement pursuant to clause 16.3 (*Termination for cause by you*) of Schedule 3. If you continue to use the Smartpay Merchant Facility or any other Services to which the Fee applies after the effective date of the change, then you will be deemed to have accepted the new Fee.
- 6.4 Fee waiver and discretion to determine category. We may in our absolute discretion waive any or all Fees from time to time. In addition, we may in our absolute discretion (exercised reasonably) determine what category a Transaction falls within and we may amend the categories from time to time, which may affect the Fee applicable to a Transaction.
- 6.5 GST. All amounts specified in this Agreement are, unless specified otherwise, exclusive of GST. To the extent that any supply under or in connection with this Agreement is or becomes subject to GST, an amount equal to the GST paid or payable in respect of the supply shall be added to the amounts paid or payable for that supply provided that the party making the supply issues a valid tax invoice to the recipient of the supply. Words used in this clause have the meaning given in the GST Law, unless the context otherwise requires.
- 6.6 Government taxes and charges. For clarity, any government taxes or charges imposed on your Linked Bank Account or a Cardholder's account (including amounts imposed on credits or debits to the account) are payable by you or the Cardholder respectively.
- 6.7 Scheme Rules relating to Merchant pricing for Credit, Debit and Prepaid card transactions
Please refer to the following link for more information relating to the Standard set by the Reserve Bank of Australia [RBA Standard](#).

7. LINKED BANK ACCOUNT(S)

- 7.1 You must maintain a linked Bank Account. For the Term plus at least 180 (one hundred and eighty) days after the expiry or termination of this Agreement, you must maintain at least 1 (one) verified and operational Australian bank account to which we can debit and credit funds due or owed by or to you pursuant to this Agreement ("**Linked Bank Account**"). This is an essential term of this Agreement and failure by you to maintain a Linked Bank Account in accordance with this clause will give us the right to terminate this Agreement pursuant to clause 16.2 (*Termination for cause by Smartpay*) of Schedule 3. The name of the account holder of the Linked Bank Account must be identical to your name as Merchant. You may wish to have a separate Linked Bank Account for the debit/credit of Fees (the "**Fee Account**") and a separate Linked Bank Account for the debit/credit of settlement sums ("**Settlement Account**").
- 7.2 Initial Linked Bank Account and changing accounts. Your initial Linked Bank Account is the account nominated on the Application Form. You can change your Linked Bank Account by providing us with no less than 14 (fourteen) days' notice in writing in such form as required by us from time to time.
- 7.3 Withhold payments for disputes. We may withhold or suspend payment of any amounts that would otherwise be payable to you until we have concluded reasonable investigations into any claimed Chargebacks or into the validity of any Transactions.
- 7.4 Must ensure sufficient funds in Linked Bank Account. You must ensure that, at all times, you have sufficient funds in the Linked Bank Account (or the Fee Account, if you choose to maintain a separate account for this purpose) to pay any Fees due on your Smartpay Customer Account. Notwithstanding the foregoing, you authorise us to debit your Linked Bank Account even where such a debit would cause the Linked Bank Account to have a debt balance and to exceed any overdraft limit that may be in place.
- 7.5 Effect of insufficient funds in Linked Bank Account. Without prejudice to any other rights or remedies that we may have, if you do not have sufficient funds in your Linked Bank Account or Fee Account, as applicable, to pay the Fees at any time, we may immediately suspend the Smartpay Merchant Facility and interest at a rate equal to the Reserve Bank of Australia's cash rate target plus 5% will accrue on a daily basis until the funds are able to be debited from your Linked Bank Account or Fee Account, if applicable, in full. In addition you will indemnify us for any sums reasonably incurred by us (including legal costs) in respect of the collection of outstanding sums.

8. DIRECT DEBIT REQUEST SERVICE AGREEMENT

- 8.1 Direct Debit Request Service Agreement. This clause 8 (*Direct Debit Request Service Agreement*) constitutes your Direct Debit Service Agreement with Smartpay, with User ID and ABN as provided in the Application Form, from time to time. By signing and submitting to us the Direct Debit Request, you authorise and direct us to debit funds from your Linked Bank Accounts. You must at all times maintain a valid Direct Debit Request for your Linked Bank Accounts. This is an essential term of this Agreement and failure by you to maintain a valid and current Direct Debit Request in accordance with this clause will give us the right to terminate this Agreement pursuant to clause 16.2 (*Termination for cause by Smartpay*) of Schedule 3.
- 8.2 Direct debit authority. You authorise and direct us to debit funds from your Linked Bank Accounts as follows:
- (a) all Fees payable by you under this Agreement;
 - (b) in the circumstances referred to in clauses 3.3 (*Risk in Equipment*), 5.3 (*New Equipment*) and 11.5 (*Counterparty does not pay us*) of Schedule 4 (*Smartpay Merchant Facility Terms*);
 - (c) any Scheme fines or penalties payable as a result of your breach of this Agreement or which we incur because of or contributed to by your acts or omissions;
 - (d) Refunds presented by you;
 - (e) any overpayments made by us;
 - (f) Chargebacks;
 - (g) amounts paid by us for Transactions where we are investigating the validity of the Transaction or a claimed Chargeback of the Transaction;
 - (h) duties and taxes payable by you;
 - (i) any deficiency in a payment disclosed in an audit or check by us; and
 - (j) any other amounts payable or owing by you to us under this Agreement.
- 8.3 When we will debit your account. Unless we agree otherwise (for example, in the case of a legitimately disputed invoice), we will debit your Linked Bank Account on the date that a payment is due or, if the due date is not a Business Day, we will debit your account on the next Business Day. The date that the charge will appear in your account will depend on the financial institution with which your account is held ("**the Financial Institution**"); you should contact the Financial Institution to confirm the exact date when the debit will appear in your account.
- 8.4 Changes to Direct Debit by us. You acknowledge and agree that we may vary the amount and frequency of debits made pursuant to the Direct Debit Request. We will provide you with written notice of any such variations by placing a notice on your monthly statement as soon as practicable and no less than 14 (fourteen) days before the changes have been implemented.
- 8.5 Your responsibilities. It is your responsibility to ensure that:
- (a) the Linked Bank Account details that you provide to us are accurate and correct and you should check the details against a recent statement from the Financial Institution;
 - (b) If you have queries in connection with the Direct Debit Request, you should contact the Financial Institution before completing it;
 - (c) The Linked Bank Accounts that you have nominated can accept direct debit payments (as direct debit may not be available on all accounts offered by financial institutions);
 - (d) The Linked Bank Accounts have sufficient cleared funds available to enable the direct debits authorised by the Direct Debit Request to be made from time to time; and
 - (e) The authority given to us pursuant to the Direct Debit Request is consistent with the account authority or signing instructions held by the Financial Institution in relation to the applicable account.
- 8.6 Failure of direct debit. If a direct debit fails or is rejected due to a problem for which you are responsible (for example, insufficient funds or incorrect account information):
- (a) We will attempt to repeat the direct debit transaction up to 3 (three) times in the following 2 (two) weeks and for each dishonour, we may charge you a dishonour fee and we may pass on any charges we incur as a result of a failed or rejected direct debit;
 - (b) You may be charged a fee and/or interest by the Financial Institution and you are responsible for paying that fee and/or interest;
 - (c) If payment continues to be unsuccessful, you must make the payment by another method.

- 8.7 Privacy and disclosure. Our privacy policy and personal information handling practices (as set out in more detail in Schedule 3, clause 10 (*Information Collection and Disclosure*)) applies to all information that we collect about you pursuant to this Direct Debit Request Service Agreement and we will not disclose any details of your Direct Debit Request unless:
- (a) the disclosure is to a financial institution and is necessary to enable us to perform or otherwise exercise our rights and obligations pursuant to this Agreement;
 - (b) we are required or permitted by law to do so.
- 8.8 Errors and disputes. If you believe that there has been an error in the debiting of your Account, you should contact us as soon as possible calling us on 1800 433 876 or emailing us at merchantservices@smartpay.com.au and we will investigate your request. If we conclude that your Account has been:
- (a) incorrectly debited, we will arrange for the relevant Financial Institution to adjust the relevant Account and we will notify you of the amount of the adjustment;
 - (b) correctly debited, we will notify you accordingly together with our reasons and any evidence supporting our conclusion.
- 8.9 Cancellation or suspension of direct debit or Direct Debit Request by you. You may request us to stop a direct debit charge by giving us 14 (fourteen) days' notice by calling us on 1800 433 876 or emailing us at merchantservices@smartpay.com.au. You may defer, change, cancel or suspend a direct debit authority at any time by calling us on 1800 433 876 or emailing us at merchantservices@smartpay.com.au. If you cancel or suspend a direct debit authority you must at the same time nominate a new Linked Bank Account and execute a Direct Debit Request with respect to the new Linked Bank Account. You may also stop a direct debit charge or cancel a Direct Debit Request by contacting your Financial Institution.
- 8.10 Authorisation after termination. Subject to clause 8.9 (*Cancellation of Direct Debit Request*) above, you agree that despite any expiry or termination of this Agreement, the authority you give to us pursuant to clause 8.2 (*Direct Debit Authority*) above continues to the extent of (and the authority continues to apply in respect of) any monies that you still owe to us at or after the expiry or termination of this Agreement (including, for example, the Replacement Cost of any Terminals not returned to us in accordance with clause 16.5(d) (*Obligations on Termination*) of Schedule 3).

9. CHANGES TO YOUR DETAILS

- 9.1 You must notify us of changes. You must immediately notify us in writing of changes to any of the following:

- (a) any of your contact details (including email, phone number, address) set out in Schedule 1;
- (b) your business or company name;
- (c) your Authorised Signatories;
- (d) your Linked Bank Account(s);
- (e) the nature of your Business;
- (f) any other circumstances that may affect your ability to meet your liabilities as and when they fall due,

together with any evidence that we request to support the change that you have requested. We may, in our sole and absolute discretion, reassess your Smartpay Customer Account and your access to and use of the Smartpay Merchant Facility and the Services as a result of any such changes and we may make such changes to your Smartpay Customer Account and/or your access to and use of the Smartpay Merchant Facility and Services as we consider necessary.

- 9.2 Notice of change of control. You must give us at least 5 (five) Business Days' notice prior to the effective date of any change in the control or your business.
- 9.3 Notice of change of residency. You must notify us of any change (from that notified to us at the time of completing the Application Form) to the residency of the any controlling person on your Smartpay Customer Account within 30 (thirty) days of the effective date of the change.
- 9.4 Notification of changes to you. We may notify you of any changes processed by us pursuant to this clause 9 and we reserve the right to suspend or discontinue providing you with such notifications at any time at our discretion.
- 9.5 When changes come into effect. If you request us to make changes to your Smartpay Customer Account pursuant to this clause 9, then other than a change in ownership and changes related to your Linked Bank Account, such changes will become effective 72 hours after we are notified of the change. A change that relates to your Linked Bank Account will become effective on the later of (a) 72 hours after we are notified of the change, and (b) the date on which you execute and submit to us a new Direct Debit Request (if applicable).

10. INFORMATION COLLECTION AND DISCLOSURE

- 10.1 Privacy Policy. We will collect, use, maintain and disclose personal information about you, your Authorised Signatories in accordance with our privacy policy from time to time. Our privacy policy is incorporated by reference into this Agreement and you confirm that you have received and have read our privacy policy.
- 10.2 We may collect information about you. Without limiting clause 10.1 (*Privacy Policy*) above, you acknowledge and agree that we may obtain from any Card issuer, operator of a Scheme, Scheme member or credit checking agency, information about you for any purpose relating to the operation of the Scheme or otherwise in relation to your access and use of the Smartpay Merchant Facility or the Services.
- 10.3 You authorise us to collect information. Without limiting clause 10.1 (*Privacy Policy*) above, you hereby authorise us to obtain from any Scheme and credit checking agency, information relating to facilities you obtained or are obtaining from other suppliers and any other information (including financial information) applicable to you and your access and use of the Smartpay Merchant Facility and Services. We use this information including personal information and information about you collected from third parties, for the following purposes:
- (a) to assess and process your application for Services that we supply under this Agreement;
 - (b) to administer and manage the Services that we supply under this Agreement; and
 - (c) to facilitate our internal business operations, including fulfilling any legal requirements and systems maintenance and testing.
- 10.4 We may disclose information about you. Without limiting clause 10.1 (*Privacy Policy*) above, you acknowledge and agree that we may disclose information about you that we collect from the Application Form or in the course of the conduct of the Smartpay Services to any person who is a Card issuer, Scheme operator, Scheme member or credit checking agency, for any purpose relating to the operation of those Schemes. This information may include information about terminating facilities made available to you and the reasons for that termination. Another service provider may use this information (amongst other things) to determine whether or not to make their facilities available to you.

11. PERSONAL PROPERTY SECURITIES REGISTER

- 11.1 The terms "Collateral", "Debtor", "Financing Change Statement", "Financing Statement", "Grantor", "Proceeds", "Secured Party", "Security Agreement" and "Security Interest" have the meanings given in the PPSA.
- 11.2 The Merchant hereby acknowledges and agrees:
- (a) that this Agreement is a Security Agreement for the purposes of the PPSA;
 - (b) that to secure the payment of the Fees and the return of the Equipment under this Agreement the Merchant charges in favour of Smartpay (as Secured Party) all its right title and interest in, to, under or derived from ("**Security Interest**") all of the collateral ("**Collateral**"), being all of the Merchant's present and after acquired property, including the Equipment until such time as the Merchant has discharged its obligations in respect of the Fees and Equipment, under this Agreement, in full;
 - (c) that the Security Interest will be a non-circulating Security Interest (previously a fixed charge) on all Collateral and will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all other registered or unregistered Security Interests;
 - (d) that the Merchant has not agreed that the Security Interest will attach at a later time;
 - (e) the Merchant will be required to pay all costs incurred in the registration and maintenance of the security interest;
 - (f) Smartpay will continue to hold a Security Interest in the Collateral in accordance with and subject to the PPSA, notwithstanding that the Collateral may be processed, commingled or become an accession with other goods;
 - (g) in the event that the Merchant uses the Collateral in some manufacturing or construction process of its own or some third party, then the Merchant shall hold such part of the Proceeds of such manufacturing or construction process as relates to the Collateral in trust for Smartpay. Such part shall be deemed to be equal in dollars to the amount owing by the Merchant to Smartpay at the time of the receipt of such Proceeds;
 - (h) any Smartpay Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all other registered or unregistered Security Interests;
 - (i) in addition to any other rights under these terms and conditions or otherwise arising, if the Merchant is in default of any of the payments owing under this Agreement, Smartpay may exercise any and all remedies afforded to it as a Secured Party, including where applicable, without limitation, entry into any building or premises owned, occupied or used by the Borrower, to search for and seize, repossess, dispose of or retain the Collateral in order to satisfy any outstanding liability owed by the Merchant, even if Smartpay does not have priority over other persons having security interest in the goods. Smartpay will not be responsible for any costs or losses arising from this, and
 - (j) Smartpay has the power to appropriate payments to such goods and accounts as it thinks fit notwithstanding any appropriation by the Merchant to the contrary.

11.3 The Merchant must:

- (a) sign all documents and provide such information which Smartpay may reasonably requires to register, amend or update a Finance Statement or Financing Change Statement in relation to a Security Interest on the PPSR;
- (b) indemnify and upon demand reimburse Smartpay for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPSR or releasing any Security Interests;
- (c) not register or permit to be registered a Financing Change Statement in the Collateral without the prior written consent of Smartpay;
- (d) not permit anything or any act which may adversely affect Smartpay's Security Interest, and
- (e) not do any of the following without the prior express written consent of Smartpay (which will not be unreasonably withheld):
 - (i) change its name, address, principal place of business, contact numbers, business practice or such other change in the Merchant's details registered on the PPSR;
 - (ii) deal in any way with this Security Agreement, or allow any interest in it to arise or be varied;
 - (iii) sell, assign, part with possession of, or otherwise dispose of the Collateral or move any of the Collateral outside Australia;
 - (iv) give control of the Collateral to another person;
 - (v) allow a set off or combination of accounts;
 - (vi) change the nature of the Collateral;
 - (vii) abandon, settle, compromise, or discontinue or become nonsuited in respect of any proceedings against any person in respect of any of Smartpay's rights in connection with the Collateral;
 - (viii) exercise or waive any of Smartpay's rights or release any person from its obligations in connection with the Collateral;
 - (ix) allow any personal property to become an accession to, or commingled with, any property that is not Collateral;
 - (x) sell or part with its business or substantially alter the nature of its business from that which is carried on as at the date the Collateral was supplied.
- (f) The parties agree that section 96, 125 and 132(3) (d) and 132(4) of the PPSA do not apply to the Security Agreement created under this Agreement.
- (g) The Merchant hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3) (d) and 132(4) of the PPSA.
- (h) The Merchant waives its rights as a Grantor and/or a Debtor under sections 142 and 143 of the PPSA.
- (i) Unless otherwise agreed in writing by Smartpay, the Merchant waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- (j) If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising out of these terms, the parties agree that each of the provisions of the PPSA which section 115 of the PPSA permits parties to contract out of, do not apply to the enforcement of that security interest unless Smartpay at its absolute discretion otherwise notifies the Merchant in writing.
- (k) The Merchant shall unconditionally ratify any actions taken by Smartpay pursuant to this clause 11.

11.4 Pursuant to section 275(6) of the PPSA, the Merchant must not disclose information pertaining to Smartpay's Security Interest without Smartpay's prior written approval.

11.5 This clause 11 will apply to the maximum extent as allowed and permitted by applicable law.

12. REPRESENTATIONS & WARRANTIES

12.1 No warranty. The Services are provided on an "as is" basis. Some or all of the Services may be provided by third party providers. To the maximum extent permitted by law, Smartpay makes no warranty that the Services (or any part of them) will be error-free or will run without interruption, or any other warranty regarding the performance of the Services.

12.2 Mutual representations and warranties. Each party represents and warrants to the other that: (a) it has the right and capacity to enter into this Agreement; (b) the person who enters into this Agreement on the party's behalf is properly authorised to do so, and (c) this Agreement will be legally binding on it.

13. DISPUTE RESOLUTION

- 13.1 Step 1: notice of concern or dispute. If you have any concern or a dispute (including in relation to billing) in connection with the Smartpay Merchant Facility or otherwise in connection with this Agreement, please contact us at our address or contact details as set out on our Website and provide us with the details of your concern or dispute. We will attempt to resolve your concern or dispute as soon as possible in accordance with this clause 13 (*Dispute Resolution*). Note that this procedure does not apply in relation to reporting unauthorised transactions on your Account.
- 13.2 Step 2: mediation. We will use our best endeavours to resolve your concern or dispute. We will notify you in writing of the outcome of our investigations, including how we propose to resolve your concern or dispute. However, if you are not satisfied with how we handled your concern or dispute, you may, by notice in writing to you, elect to have your dispute mediated. The mediator will be agreed between the parties or, failing agreement, will be an accredited mediator appointed by the Chair of the Resolution Institute. The parties will abide by the mediation rules of the Resolution Institute in seeking to resolve the dispute by mediation.
- 13.3 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 Resolution Institute 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.

14. LIABILITY AND INDEMNITY

- 14.1 You are not a Consumer. You acknowledge and agree (it is an essential condition of this Agreement the breach of which will give us the right to terminate this Agreement pursuant to clause 16.2 (Termination for cause by Smartpay) of Schedule 3) that you are not acquiring the Equipment or the Smartpay Services as a "consumer" as that term is defined in the Australian Consumer Law or any other applicable law ("Consumer"), and that you are not and will not become a Consumer during the Term.
- 14.2 Your liability and indemnity. Except to the extent caused or contributed to by us, you agree to indemnify and keep indemnified, Smartpay from and against any liability, actions, claims, demands, damages, costs and expenses incurred or suffered by Smartpay arising from: (a) a breach of this Agreement by you (including your Authorised Signatories, directors, officers and employees); (b) any fraud or negligence by you (including your Authorised Signatories, directors, officers, employees and any other person who access the Terminals or uses the Services), and (c) any claims made by a third party (including any customer) in connection with goods or services or use of the EFTPOS System.
- 14.3 Disclaimer and exclusions. To the maximum extent permitted by law:
- (a) Smartpay gives no condition, warranty or representation as to ownership, description, condition, merchantability, suitability or fitness (for a particular or any purpose) of the Equipment, the Software or of the Smartpay Services and no such term, condition or warranty will be implied;
 - (b) All terms (whether express, implied, oral or otherwise) not expressly stated in this Agreement are excluded; and
 - (c) Smartpay will not be liable to you for any loss of profit, loss of revenue, loss of business opportunities, loss of reputation or goodwill or any indirect or consequential loss arising in connection with this Agreement.
- 14.4 Limitation of liability. To the maximum extent permitted by law, any liability of Smartpay to the you with respect to the Equipment, the Software, the Smartpay Services and otherwise in connection with this Agreement shall arise in accordance with this Agreement only and shall be limited to the lower of: (a) \$1,000 (one thousand dollars); (b) the replacement of the Equipment, resupply of the Software or service, payment of the cost of the supply of replacement Equipment or acquiring equivalent equipment, or cost of having services supplied again, at the sole and absolute discretion of Smartpay and otherwise in accordance with this Agreement. Without limiting the foregoing, where Equipment has been purchased, Smartpay offers a limited warranty, as set out in the additional warranty terms supplied with the Equipment and you acknowledge that you have received and have read those warranty terms.
- 14.5 Limitations are subject to law. Nothing in this Agreement excludes, restricts or modifies any terms, conditions or warranties that are imposed or implied by any law, including the *Competition and Consumer Act 2010* (Cth). Limitations and exclusions are made only to the extent that Smartpay may legally do so.

15. SUSPENSION

- 15.1 We may suspend the Smartpay Services or any part of them without notice if we consider (in our reasonable opinion) that we or another party could suffer a loss or be subject to fraud if we continue to supply the Smartpay Services. We will inform you as soon as practicable after suspension is effected. During any suspension, you must not submit Transactions for processing and we will not process any Transactions that you submit. We will not be liable for any loss or damage suffered by you or any other party as a result of a suspension effected under this clause.

16. TERMINATION

- 16.1 Termination of a Service or Agreement. Either party may terminate a Service or this Agreement at any time by giving the other the amount of notice set out in Item 5 (Termination Notice) of Schedule 1. If a Service is terminated, this Agreement ceases to apply in relation to the terminated Service.

16.2 Termination for cause by Smartpay. We may terminate this Agreement by notice in writing if:

- (a) You breach clause 7.1 (*You must maintain a Linked Bank Account*) of Schedule 3, 8.1 (*Direct Debit Request Service Agreement*) of Schedule 3 or clause 8.2(b) (ii) (*What you must do*) of Schedule 4, and you fail to remedy the breach within 7 (seven) days of written notice from us;
- (b) You breach clause 14.1 (You are not a Consumer) of Schedule 3; or
- (c) We are directed to terminate this Agreement by the principal acquirer from whom we may acquire some of the Services, a Scheme operator or Scheme member. This may occur, for example, where excessive multiple Chargebacks are processed to your account; you change your business and the industry category into which your business falls changes; multiple fraudulent transactions are processed to your account or any other matter that may put us, the principal acquirer, a Scheme operator or a Scheme member into disrepute.

16.3 Termination for cause by you. You may terminate this Agreement by 30 (thirty) days' written notice to us if we change the Fees pursuant to clause 6.3 (Changes to Fees) of Schedule 3.

16.4 Termination for cause by either party. In addition to and without prejudice to or limiting any other rights and remedies available to a party at law or in equity, either party may, by written notice to the other party, terminate this Agreement with immediate effect if:

- (a) Fraud. If the party reasonably believes that any person is committing fraud in connection with this Agreement or any of the Services;
- (b) Breach of Agreement. If the other party is in breach of a clause of this Agreement and such breach is incapable of remedy, or has not been remedied within 7 (seven) days of receipt by that other party of written notice specifying the breach and requiring that it be remedied; or
- (c) Insolvency and other similar events. With immediate effect if the other party is declared insolvent; makes, or attempts to make, any arrangement for the benefit of creditors; is the subject of any resolution or petition for winding up or judicial management (other than for the purpose of a solvent amalgamation or reconstruction); a receiver or manager of the other party is appointed, or an order is made or resolution passed for the liquidation of the other party (other than for the purposes of a solvent amalgamation or reconstruction), or in the event any similar action or proceeding is instituted relating to any of the foregoing and the same is not dismissed within fourteen (14) calendar days.

16.5 Termination for inactivity. If you do not make a Transaction for a period of 60 (sixty) days either:

- (a) from the Commencement Date, or
- (b) from the date of the last Transaction, this Agreement will automatically terminate with immediate effect.

16.6 Cancellation Fee. If this Agreement has a fixed term and during the Initial Term:

- (a) we terminate this Agreement pursuant to clause 16.2 (Termination for cause by Smartpay) or 16.4 (Termination for cause by either party) as a result of us committing or suffering any of the events identified in that clause; or
- (b) you terminate this Agreement pursuant to clause 16.1 (Termination of a Service or Agreement) or 16.4 (Termination for cause by either party) as a result of you committing or suffering any of the events identified in that clause, or
- (c) this Agreement terminates pursuant to clause 16.5(a) (Termination for inactivity).

16.7 Obligations on termination. Upon termination of this Agreement:

- (a) your right to use the Equipment immediately ceases and the licences granted under this Agreement terminate;
- (b) you must return to us all Equipment and all guides, stationary and promotional material supplied to you by us;
- (c) all monies owed to us must be paid in accordance with the terms of this Agreement; and
- (d) without limiting paragraph (c), if the Equipment is not returned to us within 30 (thirty) days of the effective date of termination, we will debit the Replacement Cost of the Equipment from your Linked Bank Account.

16.8 No effect on other duties. Except as otherwise provided herein, termination of this Agreement for any reason shall not relieve or discharge either party from any duty, obligation or liability hereunder which was accrued as of the date of termination.

17. FORCE MAJEURE

17.1 Neither party will be liable to the other for any failure or delay to perform its obligations under this Agreement where such failure or delay is caused by events beyond its reasonable control, including industrial disputes, strikes, lockouts, acts of god, acts or threats of terrorism or war, failure of third party services providers (including the acquirer on record with respect to the Services) ("**Force Majeure**"). However, the foregoing does not apply if the Force Majeure event is caused by a breach of this Agreement by the non-performing party.

18. NOTICES

18.1 Notice to be in writing. Every notice, statement or other communication required or permitted to be served ("**Notice**") by any party ("**Sender**") on another party ("**Recipient**") pursuant to this Agreement must be in writing.

18.2 When notices are effective. Subject to clause 18.1 above, a Notice will be deemed to have been effectively served:

(a) if sent by prepaid post to the Recipient at the address of the Recipient as set out at the beginning of this Agreement or on the Application Form, on the third Business Day following the date of postage by the Sender;

(b) if hand delivered, on the date of delivery to the Recipient's address as set out as set out at the beginning of this Agreement or on the Application Form unless such delivery occurs after 5.00pm or at any time on a day which is not a Business Day, in which case the Notice will be deemed to have been effectively served on the next Business Day; and

(c) if transmitted by email to a party's email address as set out at the beginning of this Agreement or on the Application Form and a correct and complete transmission report is received by the Sender, on the day of transmission if a Business Day, or otherwise on the next Business Day (but only if no intimation has been received by the Sender that the notice has not been received, whether that intimation comes from the party to whom the notice is addressed or from the operation of an email system or otherwise).

18.3 Changes to details. A party may change its details for notices by written notice to the other party.

19. GENERAL

19.1 Entire agreement. This Agreement contains the entire understanding between the parties concerning the subject matter of the agreement and supersedes all prior communications.

19.2 Severability. If any term or provision of this Agreement is held by a court to be illegal, invalid or unenforceable under any applicable law, that term or provision will be severed from this Agreement, and the remaining terms and conditions will be unaffected.

19.3 Survival. Clauses 10 (Information collection and Disclosure) of Schedule 3, 12 (Representations and Warranties) of Schedule 3, 14 (Liability and Indemnity) of Schedule 3 and 6 (Software and Intellectual Property) of Schedule 4, together with any other clauses which contemplate that a party has any rights or obligations after the end of this Agreement, survive the expiry or termination of this Agreement.

19.4 Set-off. We may from time to time set-off any amount due for payment by you to us against any amount due for payment by us to you.

19.5 Assignment. You may not assign any of your rights under this Agreement (except to a related body corporate as part of a corporate restructure provided that prior written notice is given to Smartpay of such assignment) without our prior written consent. We may assign all or any of our rights under this Agreement.

19.6 Counterparts and electronic execution. This Agreement may be executed in multiple counterparts, each of which shall have the effect of an original and all of those counterparts taken together constitute one and the same instrument. To facilitate execution, the Parties agree that this Agreement may be executed through the use of email transmission in portable document format (PDF) or other electronic mechanism, and a counterpart of this Agreement that contains the electronic signature of a Party, which counterpart has been transmitted by email or other electronic transmission to the other Party, shall constitute an executed counterpart of this Agreement.

19.7 Changes to this Agreement. Smartpay 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 Smartpay provides you with written notice of such variations as soon as is reasonably practicable after making the variation. Notwithstanding the foregoing, we may (subject to law) change the terms of this Agreement at our absolute discretion by giving you written notice in accordance with this Agreement. We will provide you with at least 30 (thirty) days' notice if we introduce or increase a Fee (other than a government charge or fee payable to a Scheme) and your continued use of the Smartpay Merchant Facility will be deemed to be your acceptance of such changes. For any other changes (including changes in interest rates and standard fees and charges) we will notify you as soon as reasonably practicable. Where required by law, we will notify you about any new or changes to a government charge in accordance with the applicable law.

19.8 Governing law and jurisdiction. This Agreement is governed by, shall be and construed in accordance with the laws of New South Wales. Subject to, and without limiting, clause 13 (Dispute Resolution) of Schedule 3, the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and the courts hearing appeals therefrom.

SCHEDULE 4 - SMARTPAY MERCHANT FACILITY TERMS

1. IMPORTANT INFORMATION

1.1 In addition to the terms of this Agreement, you must comply with:

- (a) the User Guide;
- (b) Any requirements that a Scheme imposes on us that relate to the Smartpay Merchant Facility and that we notify you of;
- (c) any reasonable directions given by us; and
- (d) all applicable laws.

2. THE EQUIPMENT

2.1 Rental or purchase of Equipment. The Application Form sets out whether you are renting the Equipment or purchasing the Equipment.

2.2 Use of Equipment. You must ensure that the Equipment is:

- (a) used in accordance with the User Guide at all times and solely for the purpose for which it was designed and provided by us in connection with the Smartpay Services;
- (b) not moved from the Delivery Address without our prior written consent (save that this sub-clause does not apply to mobile Equipment); and
- (c) not moved or otherwise transferred out of your control.

2.3 Your general responsibilities. It is your responsibility to:

- (a) determine the specific location for installation of the Equipment (within the Delivery Address) and to prepare the location in accordance with the specification set out in the User Guide;
- (b) ensure that you have appropriate communications access, internet access and supported and regularly upgraded operating systems;
- (c) ensure you have sufficient electrical surge protection;
- (d) exercise reasonable care in the use, operation, protection, and security of the Equipment at all times;
- (e) ensure that the Equipment is stored safely and protected from theft, loss or damage and to insure the Equipment against any loss or damage to the Equipment arising from theft, vandalism, fire, flood, earthquake, misuse, neglect, or as otherwise required by us; and
- (f) regularly check for evidence of tampering including skimming devices and confirm the identification number on the Equipment is correct. You must contact us immediately if you discover any evidence of or suspect that Equipment has been tampered with.

3. TITLE AND RISK IN EQUIPMENT

3.1 Smartpay owns rented Equipment. If you rent the Equipment, the Equipment remains the property of Smartpay and/or its related bodies corporate at all times and nothing in this Agreement passes legal or beneficial title in the Equipment to you or any other party. You must not sublet, transfer, dispose of, grant a security interest over, permit a security interest to be registered over or otherwise deal with any rights or interest in the Equipment.

3.2 You own purchased Equipment. If you purchase the Equipment, legal and beneficial title in the Equipment passes from Smartpay to you upon full payment of the purchase price for the Equipment.

3.3 Risk in Equipment. Whether you rent or purchase the Equipment, risk in the Equipment passes to you upon delivery of the Equipment to the Delivery Address. Accordingly, upon delivery, you are liable for any loss or damage to the Equipment and all costs incurred in respect of the Equipment including the cost of repairing or replacing the Equipment at the Replacement Cost, subject to the terms of this Agreement. If Equipment is damaged after it has been delivered to you at the Delivery Address, you hereby authorise us to debit the repair cost or the Replacement Cost from your Smartpay Customer Account. We may choose whether to repair or replace Equipment at our discretion.

4. DELIVERY AND INSTALLATION

4.1 Delivery of Equipment to you. We will deliver to the Delivery Address the number of items of Equipment ordered by you as set out in the Application Form. We may in our absolute discretion charge you delivery and freight charges and we will pay any insurance in respect of the delivery of Equipment to the Delivery Address.

- 4.2 Accepting deliveries. Within 48 (forty-eight) hours after receipt of a delivery you must notify us in writing of any shortages, defects or damage in respect of the delivered Equipment. You must return such Equipment to us at our expenses. To the maximum extent permitted by law, failure by you to give such notice to us will be deemed an acceptance in full of all Equipment delivered.
- 4.3 Installation. You must ensure that the Equipment is installed in accordance with our guides and procedures for installation. We will provide you with reasonable assistance over the telephone or electronic or other means by explaining how to install software required to connect the Equipment to point-of-sale software that we support. We are not otherwise responsible for the installation of the Equipment and you must do so at your own cost.
- 4.4 Insurance. You must insure the Equipment with a reputable insurer with Smartpay noted as an interested party and you must, upon request, provide Smartpay with the certificate of currency for such insurance.

5. SERVICE, REPAIR AND UPGRADES

- 5.1 No third party repairers. You must not allow any third party to service or repair the Equipment, unless we advise you in writing otherwise.
- 5.2 No use of Equipment with other acquirers. If you rent the Equipment, you must not use the Equipment with any other acquirer. If you purchase the Equipment and you use the Equipment with another acquirer, then you do so at your own risk and to the maximum extent permitted by law, the warranty with respect to the Equipment terminates and we will have no liability to you whatsoever.
- 5.3 New Equipment. From time to time we may supply you with new, upgraded or repaired Equipment. If this occurs, you must return the existing Equipment within 14 (fourteen) days of receiving the new, upgraded or repaired Equipment. If we do not receive the existing Equipment within 14 (fourteen) days, the Replacement Cost will constitute a debt due by you to us and you hereby authorise us to debit such amount from the Fee Account without notice to you.

6. SOFTWARE AND INTELLECTUAL PROPERTY

- 6.1 Ownership and licence of Software and Intellectual Property Rights. All right, title and interest in the Software (including Intellectual Property Rights in the Software) remains with Smartpay at all times. We hereby grant you a non-exclusive, non-transferable licence to use the Software solely in connection with the Smartpay Services in connection with your Business.
- 6.2 What you must not do. You must not:
- (a) attempt to “hack”, decompile, disassemble, modify, translate, adapt, reverse engineer, create derivative works from, or sublicense any part of the Software. This includes “phishing”, “mining” or attempting to trigger remote code for the purpose of accessing data or material you would not otherwise have access to;
 - (b) circumvent, disable or otherwise interfere with security-related features of the Software or the Smartpay Services.
- 6.3 Updates. We may provide Updates of the Software from time to time, but we are under no obligation to do so.

7. PRODUCT & SERVICE WARRANTY

- 7.1 Equipment warranty. We warrant that:
- (a) at the date of delivery, the Equipment is of merchantable quality and is fit for the purpose for which it is supplied; and
 - (b) the Smartpay Services provided to you will be performed with reasonable care and skill.

To the maximum extent permitted by law, we provide no other warranties in relation to the Equipment, the Software or the Smartpay Service and we are not liable for any:

- (c) damage to the Equipment due to a dysfunction of any network on which the Equipment is used that is out of our reasonable control (including any failure on the part of the principal acquirer from whom we may obtain some or all of the Services from time to time) or the Communications Service; or
- (d) delay in the installation or provision of Equipment, delay in the commencement of the Smartpay Services, or any loss you incur if the Equipment is not working or you are unable to process Transactions.

8. TRANSACTIONS

- 8.1 Use of the Smartpay Merchant Facility. You must only process Transactions and use the Smartpay Merchant Facility in furtherance of the Business activities specified in your Application Form. You must obtain our prior written consent before processing Transactions for or using your Smartpay Merchant Facility for any other business or for any non-business activities.
- 8.2 What you must do. You must:
- (a) not make any warranty or representation to a Cardholder regarding us or on our behalf;

- (b) if you are passing on a surcharge to end customers:
 - (i) clearly and prominently display the value, in percentage terms, of the surcharge at the point of sale in a manner that enables the Cardholder to choose whether or not to proceed with the Transaction;
 - (ii) only charge a surcharge that reasonably reflects your cost of accepting Transactions (as that concept is defined under law) and not cross-subsidise across Schemes. This is an essential term of this Agreement;
- (c) subject to the balance available in your Smartpay Customer Account on a particular day, when processing a Refund also refund any surcharge charged to the Cardholder in the original Transaction. In the case of a partial Refund, refund a pro-rated part of the surcharge;
- (d) establish and maintain a fair policy for giving refunds or exchanging goods or services which complies with all applicable laws and to give refunds by means of a Refund and not cash;
- (e) not process any Transaction using your own Card or any Card of your Associates;
- (f) not hold a Cardholder's PIN or passcode;
- (g) comply with any monetary limits or limits on the number of daily Transactions imposed on a Cardholder by a Card issuer.

8.3 Participation in Schemes. The Terminals will be programmed to accept all Card Transactions which they are able to accept. If you do not wish to participate in any particular Scheme you must contact us and complete and return any forms we request to enable us to disable the functionality for those Schemes.

8.4 Separate agreement with Schemes. You may be required to have a separate agreement with some Scheme operators. In such cases, our only obligation in relation to a Transaction is to transmit the particulars of the Transaction to the Scheme operator. We have no liability to any person in relation to the operation or effectiveness of those Schemes.

8.5 Your merchant number. Upon request, you must inform us of your merchant number for all Schemes in which you participate.

8.6 You accept Cards at your risk. We make no representations and give no assurances whatsoever in relation to the credit worthiness of any person presenting a Card, whether a Card has sufficient funds. To the maximum extent permitted by law, you waive any right which you may have against us by reason of any inferred representation or assurance from us processing a Transaction. You accept a Card and you process the Card at your sole risk.

8.7 Transaction data is conclusive. The Transaction data produced by the Terminal is correct and conclusive except in the case of manifest error. We are not liable for any error, delay, malfunction or failure caused or contributed to or initiated by your integrated point-of-sale software.

8.8 You must notify us of malfunctions. You must promptly notify us of any malfunction or error in connection with the Terminals, the EFTPOS System or the Communications Service.

8.9 Your representations and warranties. You represent and warrant to us that in respect of each Transaction that you process or that is processed on your behalf:

- (a) all information given to us in respect of that Transaction is true and correct;
- (b) the Transaction is valid; and
- (c) the sale in respect of the Transaction is not subject to any dispute, set-off or counterclaim.

9. SECURITY

9.1 Your obligations. You must:

- (a) not disclose (except to us or as required by law) or obtain a Cardholder's name or Card details to or from any person, except where that information has been lawfully collected by you in the course of processing a Transaction;
- (b) comply with the User Guide and other security requirements published on the Smartpay website or elsewhere from time to time;
- (c) comply with the prevailing Payment Card Industry Data Security Standards (for more information see www.pcisecuritystandards.org) or any Scheme security requirements from time to time;
- (d) permit us or our nominee reasonable access to inspect your computer systems to conduct an investigation on whether there has been a security breach and/or data compromise;
- (e) use reasonable care to detect forged or unauthorised signatures or the unauthorised use of a Card;
- (f) not process a Transaction by keying the transaction details manually into a Terminal unless instructed to do so by the Terminal; and
- (g) use reasonable care to prevent the use of a Card as an instrument in money laundering or other criminal activities.

10. RECORDS AND STATEMENTS

10.1 What you must do. You must:

- (a) keep all Receipts produced by the Terminal, your books of account and records of all Transactions (both sales Transactions and Refunds) as required by law;
- (b) provide us with all Receipts and other records in connection with Transactions as requested by us; and
- (c) permit us or our nominee to inspect Receipts, your books of account and records of all Transactions (both sales Transactions and Refunds) on request.

10.2 Statements. We will make available to you each month a statement showing the amount of all transactions processed by us for you and your cost of acceptance (being the fees that we charge to you) during the previous month. It is your obligation to check the statement to ensure the accuracy of the Surcharge and the payments made to the Settlement Account and from the Fee Account. You may dispute a Transaction by following the procedure set out in clause 13 (Dispute Resolution) of Schedule 3.

11. SETTLEMENT

11.1 Settlement to Linked Bank Account. Subject to this Agreement, we will credit settlement sums to your applicable Linked Bank Account.

11.2 Timing of settlement. Subject to the remainder of this clause 11, we will:

- (a) accept all Valid Transactions made by you; and
- (b) credit your applicable Linked Bank Account with the proceeds of all Valid Transactions, within the following timeframes:
 - (i) no later than 2 (two) Business Days; 3 (three) in the case of international Card Transactions) (or, in each case, such other timeframe as may be required from time to time) following the date the Transaction is processed by a Terminal as long as settlement of all your Terminals has taken place either by a manual settlement initiated by you, or an automated settlement initiated by our systems, prior to 5am (AEST); or
 - (ii) as soon as practicable in any other case.

11.3 Availability of funds in your Linked Bank Account. Notwithstanding when we credit your Linked Bank Account, the Financial Institution with whom your Linked Bank Account is held will determine when it makes the payment available as disposable funds in your Linked Bank Account. This may vary from institution to institution.

11.4 Delay by counterparties. If there is any delay by our counterparties in respect of the processing of a Transaction, we may delay settlement to you until that counterparty fulfils its obligations. We reserve the right to delay the payment instruction in respect of any Transaction until we receive payment in respect of that Transaction.

11.5 Counterparty does not pay us. If our counterparty in respect of a Transaction fails to make a payment to us and we have already credited the Linked Bank Account, you must immediately repay to us the amount so credited. Without limiting any other recourse we may have, you authorise us to debit the relevant amount from your Linked Bank Account.

11.6 Processed Transactions may be disputed and charged back. You acknowledge and agree that the authorisation, processing and settlement of a Transaction by us is not a representation by us that the Transaction is a Valid Transaction. The Transaction may be subject to dispute or a Chargeback.

11.7 Invalid Transactions. Without limitation, a Transaction will not be valid and will therefore not be processed ("**Invalid Transaction**") if:

- (a) it or the circumstances giving rise to it are illegal under Australian or international laws or Scheme rules or requirements;
- (b) the authority provided in respect of the Transaction is forged; the rightful Cardholder did not authorise the Transaction or the use of the Card, or the Transaction is not signed where a signature is required;
- (c) the Card is not current at the time of the Transaction (including, for example, where the Card has been lost, stolen or is otherwise rejected);
- (d) the Transaction is not in connection with the provision of goods or services between you and the Cardholder;
- (e) the Transaction is not in connection with the provision of goods or services to a genuine customer as part of your Business;
- (f) it represents a transfer solely of funds rather than the supply of goods or services (e.g. a remittance of funds with no exchange of goods or services);
- (g) it is a Refund and no corresponding sales Transaction exists for the Card on which the Refund is made or purported to be made;
- (h) it is made in payment of wages or salary;

- (i) a sales transaction is split into 2 (two) or more transactions;
- (j) you do not comply with your obligations under this Agreement, the User Guide or any other direction by us in relation to the Transaction; or
- (k) we otherwise reasonably believe that the Transaction should not be processed.

12. REFUNDS

- 12.1 Ensure sufficient account funds. You must ensure you have sufficient funds in your Smartpay Customer Account to meet your Refund obligations for all Refunds that you process.
- 12.2 Limit on Refunds. We may, in our sole and absolute discretion, limit the number of Refunds processed to the periodic aggregate funds that are processed by you through your Smartpay Customer Account.

13. CHARGEBACKS

- 13.1 Chargebacks. We may refuse to accept, or having accepted, may charge back (a "**Chargeback**"), any Transaction if:
 - (a) we, in our sole and absolute discretion, consider that the Transaction is an Invalid Transaction;
 - (b) we reasonably believe that you have not performed all obligations to a Cardholder (including providing any goods or services) in respect of the applicable Transaction;
 - (c) the Transaction is illegal;
 - (d) the Cardholder disputes all or any part of its liability for any reason; or
 - (e) the Card was not valid at the time of the Transaction.

14. MERCHANT SURCHARGES

- 14.1 Smartcharge and Surcharge. If you have purchased the Smartcharge product, then in respect of all Transactions processed by you, an amount will be charged in addition to the price of the goods and services. This amount is referred to as a "Surcharge". You acknowledge and agree that the law prohibits you from charging your customers excessive Surcharges. Accordingly, you agree that the Surcharge is equal to your cost of acceptance (being the fees that we charge to you). We process and collect the Surcharge and we credit it against the fees that we charge to you.
- 14.2 No excessive customer surcharges. You acknowledge that the law prohibits you from charging your customers excessive surcharges. Accordingly, you agree that the surcharge that you pass on to your customers is equal to your cost of acceptance (being the fees that we charge to you plus any other amounts permitted by law).

15. PROMOTIONAL MATERIAL

- 15.1 We will supply promotional material. We will supply you with decals and insignias for the Cards that are accepted by the Smartpay Merchant Facility. We may supply you with other promotional material at our discretion.
- 15.2 What you must do. You agree to:
- (a) prominently display, wherever reasonably directed by us, decals and other signs advertising the EFTPOS System and Cards;
 - (b) not use any advertising or promotional material relating to Cards or the EFTPOS System except as authorised by us;
 - (c) in all your marketing and communications (including on your websites, marketing materials, advertising and other customer communications) give all payment methods equal or substantially similar logo placement and treatment in terms of payment flow, terms, conditions, restrictions or fees;
 - (d) not influence or inhibit, or attempt to do so, a Cardholder's decision in relation to the use of any payment method or encourage a Cardholder to use a particular payment method; and
 - (e) not mischaracterise, misrepresent or disparage any payment method or exhibit a preference for one or more payment methods.
- 15.3 Authority to use your name and Marks. You hereby authorise any third party with whom we provide integrated services to use your logo, name, address, phone number and merchant category in any directory of merchants participating in the relevant integrated services and you hereby grant such parties a non-transferable and non-exclusive licence to use your Marks for the purpose of identifying you as a merchant that accepts the relevant form of integrated payment and for offers or promotions by that third party.