

# EFTPOS MERCHANT AGREEMENT.

**Terms and Conditions.**

Date: June 2018



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## 1 Introduction

This booklet sets out the standard terms and conditions applying to the acceptance of Cards under various types of Merchant Facilities provided by us. If you accept our offer, as described below your legally binding contract with us will comprise of the information we give you when we make the offer, in a letter or in some other way, including:

- this booklet;
- the Merchant Operating Guide;
- the booklet “Your Guide to Merchant Fees and Charges” (which sets out standard merchant fees and charges);
- the booklet “Fraud Prevention for Merchants”; and
- the booklet “Your Guide to the Payment Card Industry Data Security Standards” (**Agreement**).

Please note we have a number of Merchant Facility products. Some of these products require you to enter into an MSA Contract. If we agree to provide you with one or more of these products, your legally binding contract will consist of the MSA Contract, this booklet and the information we give you when we make the offer and any other documents which we notify you will govern your use of that product(s) (such as, but not limited to, a Product Module).

Under this Agreement, you also must comply with any Manuals or guides we provide to you from time to time in accordance with their terms (we may provide such documents to you electronically) and the requirements set out at [www.bankofmelbourne.com.au/preauthorisation](http://www.bankofmelbourne.com.au/preauthorisation).

This Agreement will become binding in any of the following ways:

- (a) by commencing to process Transactions through the Merchant Facility;
- (b) taking delivery, either of any Equipment enabling the processing of Transactions under the Merchant Facility, or of any materials to be used by you during the currency of the facility; or
- (c) if you are an eCommerce Merchant, by contacting our Merchant Helpdesk to obtain a MID and Merchant Category Code.

If you accept our offer in a manner outlined above, you undertake to us:

- (i) to observe at all times your obligations set out in the Agreement and any Manuals or guides we provide to you;
- (ii) to execute any directions and authorities we require to give effect to any of your obligations under the Agreement; and
- (iii) not to implement any agreement similar to the Agreement with any other financial institution while the Agreement is in operation.

If you do not wish to accept our offer of a Merchant Facility, you must immediately contact us to withdraw your application whereupon we will cancel your MID. Even if you have not done any of the things set out in clauses 1(a), (b) or (c), you will be deemed to have accepted our offer if you have not contacted us to withdraw your application within fourteen (14) Business Days after the date of the offer, whether in a letter or in some other way.

If we approve a subsequent application from you for another type of Merchant Facility, the terms and conditions set out in our letter for that Merchant Facility will apply not the Agreement.

## **2 Definitions and Interpretation**

2.1 In this booklet the following words have these meanings unless the contrary intention appears:

**“Account”** means any account nominated by you for the purposes of this Agreement (including settlement, Chargeback or billing purposes);

**“Accredited Gateway Provider/Data Processor”** means a gateway provider/data processor who represents to Bank of Melbourne that they are compliant and will continue to be compliant with PCIDSS standards and agrees to comply with our requirements including security and technical standards, and can be identified through appearing on the listing at [bankofmelbourne.com.au](http://bankofmelbourne.com.au);

**“ADC”** (being an Account Data Compromise) means any event whereby the Bank or you (or any of your officers or employees), or any Service Provider facilitating the storage, transmission or processing

of card payments for or on your behalf, suspect or have confirmation of unauthorised access to Card Information;

**“Agreement”** has the meaning given to it in clause 1 as amended from time to time under clause 18;

**“Authorisation”** means the response to you requesting our approval for a Card to be used for a particular Transaction, whether through operation of the Terminal or by telephone if there is a service interruption, see clause 4.3;

**“Bank of Melbourne”, “we”, “us” or “our”** means Bank of Melbourne – a division of Westpac Banking Corporation ABN 33 007 457 141;

**“Business Day”** means any day (other than a Saturday, Sunday or public holiday) between the hours of 9:00am and 5:00pm on which banks are open for business in New South Wales.

**“Card”** means: a valid payment card issued by a member or affiliate of MasterCard® on which the MasterCard marks appear;

- a valid payment card issued by a member or affiliate of Visa on which the Visa marks appear;
- a valid payment card issued by a member or affiliate of American Express® on which the American Express marks appear; a valid payment card issued by a member or affiliate of UnionPay on which the UnionPay marks appear;
- a valid payment card capable of acceptance under the eftpos mark issued by an Australian bank or financial institution;
- a Charge Card;
- any other valid payment card issued under any loyalty programme; or
- any other valid payment card issued by another entity which we request you honour and you agree to honour, and includes a Virtual Card;

**“Card 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 participate in that scheme;

**“Cardholder”** means a person to whom a Card has been issued;

**“Card Information”** means information about or relating to an account or credit, debit or other form of payment card of a Cardholder;

**“Cash Out”** means a service where a Card Transaction is used by the Cardholder to obtain cash;

**“Chargeback”** means a debit entry to your Account processed by us which is the reversal of a credit previously settled to you, as a result of an invalid Transaction (as described in clause 7);

**“Charge Card”** means a Card issued under any one of the following Card Schemes: American Express, Diners Club, Discover or JCB;

**“Credit Transaction”** means a transaction processed through a Card Scheme other than ePAL;

**“Debit Transaction”** means a transaction processed through the ePAL Card Scheme;

**“Dynamic Currency Conversion”** (DCC) means a facility which enables Cardholders who have Cards issued by a non-Australian financial institution to elect to pay for goods or services in Australian dollars or their local currency at the time of the purchase. DCC is only available in a number of selected non-Australian currencies and on eligible Merchant Facilities;

**“eCommerce Merchant”** means a Merchant who has been authorised by us to accept Credit Transactions whilst conducting the sale of goods or services with a Cardholder using a fixed line or wireless connection over the internet or other network;

**“eCommerce Merchant Facility”** means any method and/or device utilised by you, or by any Service Provider that may be used to engage in the acceptance or transmission of Credit Transactions or storage of Credit Card payment details. This definition includes but is not limited to all software, hardware, databases, digital image and physical records used and/or maintained by you and/or the Service Provider(s);

**“eCommerce Transaction”** means a Credit Transaction between you and a Cardholder where the Cardholder sends Card Information to you over the internet or other network (including via a Website), regardless of how the information is transmitted from you to us;

**“EFTPOS”** means the Electronic Funds Transfer at Point of Sale system;

**“eftpos Trade Mark”** means all registrations for the eftpos logo that are owned by ePAL or any other trademark developed or acquired by ePAL that are contained in your Merchant Operating Guide from time to time;

**“Electronically”** means:

- electronic communication to your nominated electronic address; or
- making particulars of changes available at our website [bankofmelbourne.com.au](http://bankofmelbourne.com.au) and notifying you by electronic communication to your nominated electronic address;

**“ePAL”** means eftpos Payments Australia Limited;

**“ePAL Scheme Rules”** means the ePAL Scheme Rules published by ePAL on its website from time to time;

**“Equipment”** includes any Terminal, power cords, car adapters, docking cradles, the user and technical manuals and any other materials or items supplied by us from time to time or supplied by a third party and approved by us for use as Equipment;

**“First Data”** means First Data Resources Australia Limited ABN 88 002 603 830

**“Floor Limit”** means the total value of sales or cash out which you are authorised from time to time to make to a Cardholder on any one occasion in respect of any one Card without obtaining an authorisation number from us. We may change your authorised floor limit at any time by giving notice to you;

**“GST”** has the meaning given by the GST Law;

**“GST Law”** has the meaning given to that term in A New Tax System (Goods and Services Tax) Act (Cth) 1999, or, if that Act does not exist for any reason, means any Act or regulation imposing or relating to the imposition or administration of a goods and services tax in Australia.

**“Law”** includes any law, statute, regulation, ordinance, proclamation, by-law, statutory instrument or order, Rules or codes of conduct issued by regulatory bodies;

**“Manual”** includes the Quick Reference Guide, User Guide, Merchant Operating Guide and any other practical operating instructions we provide;

**“MasterCard”** means MasterCard International Incorporated;



**“Merchant Facility”** means the Bank of Melbourne approved facility made available to you to enable you to accept payments using Cards;

**“MID”** means merchant identification number;

**“Multi Merchant”** means one of a number of merchants who have individual merchant agreements with Bank of Melbourne and transact their business through one shared Terminal;

**“Multi Merchant Facility”** provides a means whereby one of a number of merchants may process Transactions for their individual businesses through one shared Terminal;

**“PAN”** means the Primary Account Number or Cardholder account number commonly located on the front of a Card;

**“Payment Gateway”** provides a secure method for authorising Credit Transactions over the internet through a system accredited by Bank of Melbourne;

**“PA-QSA”** means Payment Application Qualified Security Assessor;

**“PCI PA-DSS”** means Payment Card Industry Payment Application Data Security Standards, developed and updated by the PCISSC from time to time, and applying to software vendors and other vendors developing payment applications that store, process or transmit Card Information, as part of an authorisation or settlement process, where these payment applications are sold, distributed, or licensed to third parties;

**“PCIPTS”** means Payment Card Industry PIN Transaction Security;

**“PCIDSS”** means Payment Card Industry Data Security Standards which are developed and updated by the PCISSC from time to time, with the aim of facilitating protection of cardholder payment data from unauthorised access, and which is applicable to any person who stores, processes or transmits card data. To avoid doubt, obligations in relation to PCIDSS apply to Cards whether or not the relevant Card Scheme is mentioned in PCIDSS;

**“PCISSC”** means the Payment Card Industry Security Standards Council, being a not-for-profit organisation responsible for the development of the PCIDSS, the PCIPTS and the PCI PA-DSS standards;

**“PIN”** means personal identification number;

**“PINpad”** means the device designed as part of, or for attachment to, a Terminal and which contains an alpha/number function keyboard by which the user nominates an account and enters a PIN;

**“PPSA”** means the *Personal Property Securities Act 2009* (Cth);

**“Pre-Authorisation”** or **“Pre-Authorised”** refers to the initial Authorisation for an estimated amount reserved on a credit card where final billable amount is unknown at the initial point of sale. Instead of debiting funds from the cardholder you put the amount on a temporary “hold”, locking those funds until the final billable transaction is processed. From this initial Authorisation, subsequent Authorisations may be made, thereby reflecting the final amount agreed and acknowledged by the cardholder;

**“Prepaid Sale”** means the merchant receives payment from a Cardholder before the merchant has provided goods or services to the Cardholder;

**“Primary Merchant”** means the merchant of a Multi Merchant facility who agrees to take full responsibility for the physical terminal in accordance with clause 3 of this booklet;

**“Privacy Laws”** means the *Privacy Act 1988* (Cth) and any other applicable privacy or data protection laws which may be amended and in force from time to time;

**“Quasi-Cash Merchant”** is a merchant who carries out a Quasi-Cash Transaction;

**“Quasi-Cash Transaction”** means a Transaction between you and a Cardholder where you sell items that are directly convertible to cash. Examples include (but are not limited to) money orders, traveller’s cheques, precious metals and foreign currency;

**“Recurring Transaction”** means when you are authorised to make regular drawings on a Card at predetermined intervals (not to exceed one year between Card Transactions) with the Cardholder’s written authority;

**“Related Body Corporate”** has the same meaning as in the *Corporations Act 2001* (Cth);

**“Rules”** means the Card Scheme rules set by Card Schemes from time to time including the ePAL Scheme Rules;

**“Secure Socket Layer (SSL)”** means the encryption technology used on a server that encrypts important data such as credit card numbers and other information when it is being stored or passed from one digital device (such as a computer) to another;

**“Security Interest”** includes any security interest under the PPSA, mortgage, pledge, lien, charge, hypothecation, trust arrangement, title retention arrangement or other security interest or encumbrance;

**“Sensitive Authentication Data”** includes any full magnetic stripe, PIN verification or code otherwise known as CAV, CVC, CVC2, CVV, CVV2, PVV, PIN and PIN Block data and excludes the information listed in clause 4.12;

**“Service Provider”** means any entity or third party that stores, processes or transmits Card Information on your behalf or you utilise to assist with the acceptance of card payments including but not limited to Payment Gateways and Web Hosting Providers;

**“Shopping Cart Vendor System”** means the data processing system comprising the hardware, software and telecommunication network utilised by a shopping cart vendor to provide services including any third party systems connected to a shopping cart vendor’s hardware, software and telecommunications network;

**“Small Business”** means a business having less than 100 full time (or equivalent) people if the business is or includes the manufacture of goods, or, in any other case, less than 20 full time (or equivalent) people;

**“St.George Group”** means St.George and any Related Body Corporate of Westpac;

**“Subsequent Merchant”** means a merchant who is a member of a Multi Merchant facility and transacts business through a shared Terminal for which the Primary Merchant has full responsibility for the physical Terminal;

**“Terminal”** means the hardware used to accept Card payments and the software that is installed on that eftpos hardware, and includes any replacement hardware. “Software” includes the operating system, application software and the terminal management software, and any updates issued from time to time;

**“Terminal Access Services”** means access to Bank of Melbourne’s Transaction network; services that facilitate Transactions, including the provision of the installation, maintenance, repair, training and other services, and the provision of a Terminal (including the right to use the software) of the type and configuration ordered by you;

**“Trade Mark”** means any logo, symbol, trade mark, trade name, service mark, brand name, domain name, company or trading name, trading get up and similar right, whether registered or unregistered, belonging to us or any Related Body Corporate;

**“Transaction”** includes a Debit Transaction and Credit Transaction as well as Sale Refunds as defined in clause 6;

**“UnionPay”** means China UnionPay Co., Ltd.;

**“Virtual Card”** means a Card Scheme payment instrument validly issued under the authority of a Card Scheme, such as a ‘virtual card’ having a validly issued card number with associated expiry date with no physical card issued, or a device using ‘near field communication’ or similar technology under the authorisation of a Card Scheme to emulate a validly issued payment card;

**“Visa”** means Visa Inc.;

**“Website”** means an interface or portal published by a merchant to facilitate an eCommerce Transaction which includes but is not limited to a web page, web portal or smart phone application;

**“Web Application”** means the software that your business utilises to advertise the sale of goods and/or services over the Internet;

**“You”** means the person to whom the Letter is addressed.

If there is more than one, it includes any one or more of You and each of you is jointly and severally liable under this Agreement. This liability will continue even where one or more of you is not liable or is no longer liable.

2.2 For the purposes of this Agreement:

- (a) Transaction information is presented by the completion and delivery of a voucher recording the Transaction or by any other form we approve;
- (b) a sale includes the supply of goods or the supply of services or both;
- (c) the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates;
- (d) the singular includes the plural and vice-versa;
- (e) the failure by either party to exercise any right under this Agreement does not mean that party has waived that right;
- (f) the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency;
- (g) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time; and
- (h) a reference in this Agreement to any Law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision (however described).

### **3 Equipment**

- 3.1 You must at your expense, prepare (and keep prepared) at your premises a site which meets our specifications for the installation of Terminals as outlined in the Merchant Operating Guide (such as a power supply or telephone line if applicable) for the use of your Equipment in accordance with the Manuals and any technical documentation from the manufacturer or supplier of the Equipment.
- 3.2 You will allow (and where applicable ensure you have the right to permit) at all times our representatives to enter your premises and access the Equipment to install, move, maintain, repair, replace or remove the

Equipment or to ensure that you are complying with the Agreement, during business hours or at any other reasonable time. We may do this even if it disrupts your business activities, provided we are acting for a reasonable purpose.

- 3.3 Upon initial installation of a Terminal we will provide training either face-to-face, online or via the phone, on the use of the Terminal to the individual(s) you designate. These people must be available at the time of installation. You are responsible, at your cost, to train all employees, contractors or agents who access the Terminal. You must not permit any untrained or unauthorised persons to operate or otherwise use the Terminal.
- 3.4 If a Terminal malfunctions, or for any reason is not able to process Transactions, you should report it immediately to us. We will endeavour to remedy the problem and may arrange for the Terminal to be repaired or replaced at our discretion. You must not carry out a Transaction using a malfunctioning Terminal. It is your responsibility to ensure that other means are available at short notice to enable you to continue to process Transactions. This may include identifying to your customers the location of the closest automatic teller machine.
- 3.5 If you use Terminals supplied by someone other than us, you must:
  - (a) only use Terminals which we have approved as technically compatible with the systems, Equipment and software used by us for the purposes of our Card Transaction facilities, and in using any such Terminals you will comply with any conditions as to its use which we specify in our approval. We may charge you a reasonable fee for testing and assessing the suitability of Terminals supplied by persons other than us;
  - (b) pay all costs and expenses relating to the installation of those Terminals;
  - (c) pay all costs and expenses where development is required by us to support the Terminals, where we agree to undertake this work;
  - (d) pay all costs and expenses relating to the maintenance of compliance for the Terminals;

- (e) inform us prior to your dispossession of any of the Terminals;
- (f) comply with the terms of any agreement in relation to the Terminals; and
- (g) upgrade the Terminals in the event of an industry or security standard change. We will provide notice where this is required.

3.6 We may supply you with Equipment, Manuals, Card decals and promotional material on agreed terms and conditions from time to time. You agree to display prominently at each of your premises all signs, advertising and promotional material we supply to you. You must not use any advertising or promotional material in relation to the Cards, except as authorised by us.

3.7 For the duration of the Agreement you must:

- (a) use and operate the Equipment with reasonable care only in accordance with the user and technical manuals and any other instructions provided to you by us and allow only your fully trained staff to operate the Equipment;
- (b) allow only us or our representatives to maintain, replace (including any upgrades performed by us from time to time) or remove the Equipment;
- (c) allow us to upgrade the Equipment as required including when industry or security standards change. If you use a Terminal provided by someone else you must upgrade it when we tell you;
- (d) keep the Equipment secure and under your control, and (unless it is a mobile Terminal) at the premises at which it was installed (or at such other location as is agreed by us);
- (e) insure the Equipment against theft, loss, damage, vandalism, fire, flood, earthquake, misuse or neglect, for its full replacement value;
- (f) take proper care of the Equipment. You are responsible for any costs incurred in the replacement or repair of the Equipment due to theft, loss or damage (fair wear and tear excepted);
- (g) not process a Card Transaction without presentation of a Card, unless we have given you authority to accept mail and telephone orders from Cardholders or you are an eCommerce Merchant;

- (h) not process a Transaction by manually keying details into the Terminal unless previously agreed by us;
- (i) use reasonable care to detect forged or unauthorised signatures or the unauthorised use of a Card;
- (j) immediately alert us and your Service Provider, if the Equipment has been damaged, stolen or mislaid or if you suspect that the Equipment has been tampered with;
- (k) not modify the Equipment in any way;
- (l) you must ensure your Terminal receives all software updates in a timely manner by leaving your Terminal powered on and connected overnight at least once every 30 days.

3.8 You acknowledge and agree that title in the Equipment, Manuals, Card decals and promotional material we provide you remains with us or our suppliers at all times, and is not transferred to you. You must not sell, assign or encumber them, nor provide them to any third party. You must not remove any plates, stickers or markers which are used to identify the Equipment and/or the owner of the Equipment. We may, without your consent, give a third party any form of interest in, or security over, the Equipment or all or part of your agreement with us.

3.9 We may at any time replace any Equipment with new Equipment. If we replace any Equipment we will notify you promptly of any additional amounts payable by you to us. When requested, you must discontinue use of any Equipment that has been replaced. You must also follow our reasonable directions regarding the return or disposal of any Equipment which has been replaced.

3.10 The Terminal is supplied strictly to enable you to process Card Transactions under the Agreement, and any other kinds of Transactions which may subsequently be regulated by the Agreement.

3.11 Your rights in the Equipment do not extend beyond a non-transferable non-exclusive licence to use the Equipment solely for your lawful Transactions in Australia.



## **4 Processing Transactions**

- 4.1 You must process all Transactions in accordance with all applicable Laws, any obligations in the Agreement and any direction of Bank of Melbourne in carrying out activities related to your Merchant Facility.
- 4.2 You must process all Transactions in Australian dollars except where you have been approved for Dynamic Currency Conversion (DCC). You may earn commissions on currency conversion Transactions at the rate specified from time to time.
- 4.3 You must obtain prior Authorisation for the total amount of the sale if it exceeds the applicable Floor Limit when processing Transactions via a Terminal. For all telephone, facsimile or online Transactions processed through a Terminal you must obtain prior Authorisation. You are responsible for verifying the identity of the Cardholder (for example by ensuring that the signature or any other Cardholder authorisation on the voucher is not forged, obtained by fraud or deception, or unauthorised) and that the Transaction is not otherwise invalid (refer to clause 7). You must obtain additional Authorisation if the final amount exceeds the total Authorised amount. You must also cancel any Authorisation previously obtained that are no longer required.

Please refer to [www.bankofmelbourne.com.au/preauthorisation](http://www.bankofmelbourne.com.au/preauthorisation) and your terminal User Guide for further information about any Pre-Authorisation requirements for your specific terminal.

- 4.4 Throughout Cardholder contact, you must prominently and unequivocally inform the Cardholder of your identity so that the Cardholder can readily distinguish you from any supplier of goods or services to you or other third parties. You must also provide notice to the Cardholder that you are responsible for the Transaction, including the goods or services acquired by use of the Card, as well as for related customer service, dispute resolution and performance of the terms and conditions of the Transaction.

- 4.5 You are responsible for ensuring that a Transaction is approved or declined before providing a Cardholder with goods and/or services. We take no responsibility and will not provide compensation where goods or services (including Cash Out Transactions, where permitted) are provided for declined Transactions.
- 4.6 You must only process Transactions and present vouchers to us in circumstances where you have actually supplied the relevant goods or services to a Cardholder for which the Card was used for payment, unless we have specifically agreed that you may process pre-payment Transactions and the Cardholder has expressly authorised the Transaction being processed earlier.
- 4.7 Where you have requested, and we have agreed, to process off-line Transactions without real-time authorisation from the Card issuer and outside the parameters set within the Card that define the rules and limits within which the Card can perform Transactions, you will be liable for any resulting fraudulent Transactions or chargebacks.
- 4.8 You must not split a Transaction into two or more Transactions on the same Card to avoid having to obtain an Authorisation. You will not be in breach of this clause by splitting a Transaction in the following instances:
- (a) when the Cardholder bills a portion of the Transaction to a Card and pays the remaining balance by cash or cheque only; or
  - (b) when the goods or services will be delivered or performed after the Transaction date, and one voucher represents a deposit, and the second voucher represents payment of the remaining balance and the second voucher is conditional upon the delivery or performance of the goods or services.
- 4.9 You will not undertake any Transaction:
- (a) representing a refinance or transfer of an existing Cardholder's financial obligation to you (whether or not you consider that the obligation is not collectable); or
  - (b) as an alternate way of accepting payment due to the dishonour of a Cardholder's personal cheque.

- 4.10 If required by law, we will forward to you monthly statements. Statements will take the form of Tax Invoices. This may be in electronic format.
- 4.11 Under no circumstances should you request or allow any Cardholder to disclose their personal identification number (PIN), password or other code or information that can be used to access a customer's account, for you to retain. You should only retain a Card if we ask you to do so. Without limiting your other obligations in this clause 4.11, you will not disclose, give (other than to us or unless required by law), buy, sell or exchange a Cardholder's name or Card details to any person.
- 4.12 Subject to clause 4.13, you may store only the following Card Information, and in each case only if there is a genuine business need to do so:
- (a) PANs which have been rendered unreadable in compliance with the PCIDSS;
  - (b) Cardholder name;
  - (c) Card expiry date; and
  - (d) extended service code (used for Smart Card processing).

If the genuine business need no longer exists, the relevant Card Information must be deleted or destroyed in accordance with the PCIDSS. You must store Card Information securely such that the information cannot be reasonably compromised.

- 4.13 Under no circumstances will you store Sensitive Authentication Data after obtaining an Authorisation. All Card Information elements not listed in clause 4.12 are considered to be Sensitive Authentication Data and are not to be stored under any circumstances after Authorisation.
- 4.14 Under no circumstances should you request or use Credit Card details provided via email for payment of the provision of goods or services. If provided, you must not use them for any purpose and must immediately securely destroy these details.

- 4.15 You must not process or encourage Transactions through the Merchant Facility that relate to, or are in connection with, the sale of goods or services that are in contravention of the laws of Australia, the laws of your jurisdiction or the laws of the Cardholder's jurisdiction (including but not limited to the violation of export controls, obscenity laws or gambling laws). You must not offer for sale goods or services, or use or display materials, that are illegal, obscene, vulgar, offensive, dangerous or are otherwise inappropriate. You are required to comply with any industry code of conduct specifically regulating or prohibiting the retention by you of Cardholder's personal identification numbers, passwords or other codes or information that can be used to access a Cardholder's account.
- 4.16 We will not be responsible or liable for any delay that might occur in the processing of payments or any lost Transactions that might occur where the Merchant Facility is not available for any reason. This includes instances where Cash Out Transactions are not available.
- 4.17 We are not liable for any loss which you may suffer resulting from our failure to credit an Account due to technical or administrative difficulties relating to the banking system used for the transfer of funds. This also includes instances where your Merchant Facility is unable to settle for any reason.
- 4.18 You acknowledge that First Data is engaged by us to provide Authorisation services and the relationship between us and First Data is not an employment or fiduciary relationship. Only Credit Transactions can be authorised by First Data. You acknowledge and agree that if a Debit Transaction using a valid Transaction Card capable of acceptance under eftpos is declined by the issuing Australian bank or financial institution, then we will be unable to recover the value of the Debit Transaction for you and we will have no liability to you or any third party in respect of that Debit Transaction.
- 4.19 We may notify you if you have excessive Chargebacks and/or fraudulent Transactions in any particular category or if a particular category is at risk of exceeding the threshold. You must take immediate action to rectify the situation. Failure to resolve the cause of the problem, in accordance with our instructions may result in Chargebacks or non-compliance Card Scheme fines which may be passed on to you.

- 4.20 If we determine that your conduct in processing Transactions may cause loss to you or Bank of Melbourne, we may withdraw or impose further conditions on any authorisation we have given for card-not-present Transactions. You must comply with any such condition.
- 4.21 You are required to obtain and hold Cardholder authorisation for all Recurring Transactions and ensure the nominated card is within current validity at all times.
- 4.22 We may authorise you in writing to offer Cash Out Transactions on any conditions we specify. You must not offer Cash Out Transactions unless we have authorised you to do so, however you need not offer them if we have given that authorisation.
- 4.23 If we have authorised you to offer Cash Out Transactions, then unless we agree otherwise in writing:
- (a) you must offer them only in Australian dollars;
  - (b) you must offer them only in the case of a Transaction where the Cardholder and Card are present;
  - (c) you may not offer them in relation to a Credit Transaction;
  - (d) you must process Cash Out Transactions only using the Cash Out menu or facility on your Equipment;
  - (e) you must provide the whole of the Cash Out Transaction amount to the Cardholder in legal tender (that is, valid banknotes and coins), and must not withhold any of the value of the Cash Out transaction, other than a surcharge permitted under clause 5.

## **5 Surcharging**

- 5.1 You agree to:
- (a) charge a Cardholder a price for goods and services comparable to the price you charge for cash for those goods and services; and
  - (b) honour a Card tendered by a Cardholder for the payment of goods or services to be supplied by you to the Cardholder in accordance with the Agreement.

- 5.2 If you charge a fee for Transactions, you must clearly disclose any surcharges that might apply before processing the Transaction. Any surcharge must be included in the relevant transaction and not processed as a separate transaction. (For example, where a surcharge applies to a purchase Transaction, the surcharge must be added to the amount of the purchase Transaction and must not be processed as a separate Cash Out Transaction.)
- 5.3 When you are providing a Sales Refund on a Transaction that included a surcharge, the Sales Refund for that Transaction must include the full or prorated surcharge amount.
- 5.4 You must limit the amount of any surcharge to the permitted amount for that Transaction as provided by the Reserve Bank of Australia in a standard or other instrument as updated from time to time.
- 5.5 Before a Transaction is completed, you must allow the Transaction to be cancelled, without the Cardholder incurring any cost after advising the Cardholder of the total Transaction amount.
- 5.6 You acknowledge that Card issuers may from time to time change the classification of a Card (i.e. standard or premium) and, as a result when applying a surcharge rate to a Cardholder, it cannot be guaranteed that the classification of the Card on which you have based the surcharge will be the same as the classification on which you are charged your merchant service fee in relation to the same Transaction.
- 5.7 You will pay any fines associated with your noncompliance with Card Scheme surcharging rules.

## **6 Sale Refunds**

- 6.1 You must establish a fair policy for the exchange or return of goods and for the re-performance of services, and for the handling of refunds and disputed amounts, which complies with all applicable Laws including the Australian Consumer Law. Subject to clauses 6.2 and 6.3, you agree to give credit to Cardholders in respect of any refunds for goods and services or disputed amounts (as applicable) by means of a sales refund Transaction (Sale Refunds) as set out in the Manuals and not in cash or by cheque.

6.2 Subject to clauses 6.3 to 6.6, you may process Sale Refunds by transferring the amount of the refund from your Account to a Card account. Sale Refunds may only be processed to a Card where there was an initial valid Transaction on that Card. A Sale Refund must not be provided to a different Card, in cash or by cheque. If your Terminal allows Sale Refunds, the Sale Refund should be refunded to the Cardholder through your Terminal. The provisions in clauses 6.3 to 6.6 inclusive do not apply where the Terminal has been supplied by somebody other than Bank of Melbourne. You should refer to the agreement with whoever supplies the Terminal to you for their requirements (if any).

6.3 In order to utilise Sale Refunds via a Terminal:

- (a) you must initiate a password; or
- (b) for some products, we will provide you with a password which you must change immediately on receipt by telephoning our Helpdesk.

You may not process a Sale Refund using a Terminal unless you enter the password prior to each Transaction.

6.4 Where we have issued you with a password, we will not be responsible for any unauthorised Sale Refund processed through your Terminal using the password we have issued.

6.5 You will control and be responsible for access to the Terminal Sale Refund password. You should change your password if for any reason you think it has become known to persons other than those who you have authorised to complete Sale Refunds.

6.6 We are not responsible for any unauthorised Sale Refunds processed through your Terminal, even if those Sale Refunds may cause your Account to be debited by the amount of the Transaction.

6.7 If we do not supply electronic Terminals to you we will not be responsible for any unauthorised Sale Refunds processed through your Terminal.

## **7 Invalid Transactions**

7.1 A transaction is invalid if:

- (a) the underlying supply of goods and/or services is illegal or you do not have a valid regulatory licence or authorisation to process that supply;

- (b) it was processed by you after your Merchant Facility or the Agreement was terminated in accordance with clause 24 or whilst it was suspended in accordance with clause 30;
- (c) the Transaction is split into two or more Transactions on the same Card or over two or more cards to avoid having to obtain an authorisation for the total amount of the sale (each Transaction will be invalid);
- (d) the signature on the voucher or any other Cardholder authorisation on the voucher is forged, obtained by fraud or deception, unauthorised or otherwise invalid;
- (e) the particulars on the voucher are not identical with the particulars on the Cardholder's copy;
- (f) the Card relating to the Transaction is not valid at the time of the Transaction;
- (g) the voucher presented to us is incomplete or illegible;
- (h) the Card was used without the Cardholder's authority;
- (i) the Transaction did not originate from an act between you and the Cardholder;
- (j) you have not retained your copy of the receipt or voucher signed by the Cardholder for 18 months from the date of the Transaction or you do not produce to us the tally roll receipt or voucher within five Business Days of a request by us for production of that receipt;
- (k) it is a Credit Transaction and:
  - (i) it is not for the supply of goods or service to a genuine customer; or
  - (ii) it relates to a transfer of funds, not supply of goods or services;
- (l) it was submitted as a Transaction authorised by us, where an authorisation was never obtained from or given by us
- (m) it is a Sales Refund and:
  - (i) no corresponding sales Transaction exists for the Card on which the Sales Refund is made or purported to be made;



- (ii) it represents the payment of wages/salary;
  - (iii) it represents the transfer of funds; or
  - (iv) insufficient funds are available in the Account to cover the refund amount;
- (n) you fail to comply with all messages displayed on the Terminal in relation to the Transaction;
- (o) where the Transaction is not processed by a Terminal:
- (i) the voucher used is incomplete or illegible;
  - (ii) you imprinted a voucher for the Transaction contrary to a prior message displayed on a Terminal in relation to the Cardholder or the Transaction; or
  - (iii) the voucher does not bear the Card imprint;
- (p) you are unable to demonstrate the validity of the Transaction to our satisfaction;
- (q) you do not otherwise comply with your obligations under the Agreement in relation to the Transaction; or
- (r) you do not respond to voucher requests or other supporting information required by us within the timeframes specified by the applicable Rules.
- 7.2 A telephone, Internet or mail order Transaction is also invalid if the Transaction is not authorised by the Cardholder, or in the case of a standing authority, the authority has expired or was cancelled prior to the Transaction. You acknowledge that authorisations obtained provide no guarantee that the person providing the Card details is the Cardholder.
- 7.3 We may refuse to accept, or may Chargeback, any Transaction if:
- (a) the Transaction is invalid or we consider it to be invalid;
  - (b) the Cardholder claims the Transaction is invalid or disputes liability for any reason;
  - (c) you process a cancelled Recurring Transaction;
  - (d) the Cardholder asserts a claim for set-off or a counterclaim;
  - (e) the sale amount exceeds the Authorised amount;
  - (f) the sale relates to an expired Authorisation.

You acknowledge that Chargebacks may be processed to your Account up to 18 months after the date of the original Transaction.

- 7.4 You undertake to abide by industry best practices to minimise fraud and chargebacks as set out in the Manuals from time to time.

## **8 Your Account**

- 8.1 If you request and we agree, you may use one account for settling transactions you process and one for paying your fees and other amounts you owe us (for example Chargebacks). You must advise us of the details of the Account. We will credit your Account with the amount of the Transactions processed. You must notify us immediately if your Account details change. If your account is with another financial institution, you will need to give us a new Direct Debit Authority. In some circumstances (e.g. eCommerce Merchant Facilities) it will be necessary for Transactions to settle to a Bank of Melbourne account. You will be advised of this requirement at the time of application.
- 8.2 You authorise us, from time to time, to debit your Account in respect of:
- (a) all service charges, fees and other charges set by us and which are notified to you from time to time;
  - (b) all government charges, duties and taxes (including GST) that apply in relation to the Agreement;
  - (c) the full amount of all Sales Refunds you process, less any charges we have already debited to your Account relating to the relevant Transaction;
  - (d) any overpayments or credits we have made in respect of Transactions due to errors or omissions;
  - (e) any Chargeback;
  - (f) any moneys paid by us to you for Card Transactions where we are investigating the validity of the Transaction or a suspected Chargeback;
  - (g) any fees, fines or penalties that we are required to pay to Card Schemes pursuant to the Rules as a direct or indirect result of your failure to observe your obligations under the Agreement including any procedures set out in the Manuals;

- (h) a Card Transaction not being a valid Transaction or being charged back to us;
- (i) our maintenance of the facilities we supply you under the Agreement;
- (j) any deficiency in a payment made by you following an audit or a check by us of your Merchant Facility or Account;
- (k) all penalties and costs incurred by us as a result of an ADC or your non-compliance to the PCIDSS (including your Service Providers) including but not limited to the cost of all forensic investigations as required by us or the Card Schemes;
- (l) any other money you owe us under the Agreement; and
- (m) reasonable enforcement expenses under the Agreement, including any amount reasonably incurred by the use of our staff and facilities, in the event of a breach of the Agreement.

If we debit the Account and the Account contains insufficient funds, then the payment may be reversed and you will be regarded as not having made the payment in which case you must make the payment to us as soon as possible upon notification by us to you that payment is required, although such notification does not prevent us from attempting the debit again under this clause.

- 8.3 You will pay on demand the amount of any debt you owe us under the Agreement which remains unpaid. Should you fail to pay any debt which you owe us we may commence enforcement action and report your default to a credit-reporting agency, which may affect your credit rating and your ability to obtain commercial finance in the future. We may also set-off any amount due for payment by you to us against any amount due for payment by us to you.
- 8.4 We can also debit or credit your Account with the amount of any deficiencies or charges we establish are payable following an audit or check of your Account.

- 8.5 (a) If:
- (i) we have concerns about your solvency;
  - (ii) you are involved in an unusual number of Chargebacks or invalid transactions as determined by us in our sole discretion;
  - (iii) we have commenced but not yet concluded reasonable investigations into any claimed Chargebacks or into the validity of any transactions processed by you; or
  - (iv) we have concerns about you or your business, we may withhold release of the funds in the Account, or withhold or suspend payment of any money that would otherwise be owing to you under the Agreement, until further notice. We may also establish an Account in your name for the purpose of retaining funds for processing Transactions or Chargebacks.
- (b) We may appropriate money you hold in your Account, or any other related Account with us, towards any and all amounts you owe us under the Agreement. If we do this, the balance of your Account will reduce by the amount used for this purpose. We will notify you promptly after exercising our right to appropriate money in your Account.
- 8.6 You are responsible for reconciling your sales and settlements for all Transactions. If you have any concerns, you must contact us within 7 days from the date of the Transaction and request that it be reviewed by us. Any disputes raised after this time will not be reprocessed or otherwise reviewed by us.
- 8.7 You must reconcile the statements that we send you under the Agreement to ensure that payments to and from your Account have occurred in accordance with the Agreement. It is your obligation to check the accuracy of the statements. **If you fail to notify us within 3 months of an incorrect fee being processed, and thus an incorrect amount was debited from your account or a payment should have been made to you, then you will have no claim against us and the account with us will be deemed settled. This includes but is not limited to Terminal rental fees, minimum merchant service fees, termination fees and transaction fees.**

## **9 Online access to information about your merchant facilities**

- 9.1 You agree that if we grant you a logon/s to any online service for the purposes of, but not limited to, accessing electronic copies of statements and submitting service requests to Bank of Melbourne in relation to your Merchant facilities, that you are responsible for administering and managing access to that service.
- 9.2 We will not be liable for any unauthorised use of your logon/s or for any inaccuracy, error, delay or loss that any User incurs as a result of connecting to, downloading or accessing details about your Merchant facility online, therefore you should keep your logon details secure and confidential. You must notify us of any changes to your authorised users of an online access service. If a user ceases to be employed by you, we must be notified immediately to cancel that user's access.
- 9.3 We reserve the right to suspend a user's access to an online service relating to the merchant facility if we suspect that they are using that service inappropriately or not in accordance with any instructions issued from time to time.
- 9.4 We make no guarantee that information available on any online service relating to the merchant facility is accurate or correct at the time of viewing. Merchant Online is subject to system maintenance and availability and to subsequent adjustment of information to reflect the true legal position, therefore users should independently download or record information for their own record keeping purposes.

## **10 Hotel/Motel Reservation/Car Rental Guarantee and Advance Deposit**

- 10.1 This clause 10 only applies where you have been authorised to accept Credit Transactions to guarantee hotel/motel/car rental reservations and/or advance accommodation deposits.
- 10.2 MasterCard, Visa and UnionPay have each arranged for their members a program that permits their Cardholders to guarantee reservations of hotel, motel accommodation or car rental by telephone and make deposits in advance towards accommodation or car rental reservations by using their nominated MasterCard or Visa card.

10.3 You agree to:

- (a) handle the reservations in accordance with the Rules;
- (b) provide details of the charges up front (e.g. room or rental rate inc. tax)
- (c) honour these reservations in all circumstances;
- (d) cancel the reservation and, where necessary, issue a Sales Refund to the Cardholder if the Cardholder cancels the reservation.

10.4 If there is a dispute, you agree to accept a Chargeback where the Cardholder claims he/she cancelled the guaranteed reservation.

10.5 When you process Transactions to guarantee hotel/motel or car rental reservations:

- (a) You agree to provide a confirmation code and (if applicable) a cancellation code, and advise the Cardholder to retain these in the case of a dispute;
- (b) You must:
  - (i) accept all cancellations prior to the specified time;
  - (ii) not require cancellation notification more than 72 hours prior to the scheduled arrival or pick-up date;
  - (iii) if the Cardholder makes the reservation within 72 hours prior to the scheduled arrival or pick-up date, ensure that the cancellation deadline is no earlier than 6.00pm merchant outlet time on the arrival or pick-up date;
  - (iv) if you require that a Cardholder cancel before 6.00pm merchant outlet time on the date guaranteed, mail or email the cancellation policy, including the date and time that cancellation privileges expire, to the Cardholder;
  - (v) if the Cardholder has not claimed or cancelled the hotel or car rental reservation by the specified time, you must hold the rooms or car available according to the reservation until check out time the following day or in the case of car rental, 24 hours. You may then complete a Transaction receipt that must contain the following:

- Amount of one night's lodging plus or one day's car rental applicable tax;
- Cardholder's name, account number and expiration date; and
- The words "No Show" on the signature line of the Transaction receipt.

You are not required to continue to hold the room or car for subsequent periods where the Cardholder has failed to show by the check-out time the following day or in the case of car rental, after 24 hours.

- 10.6 You must provide at no charge a comparable room or car of at least equal quality. If the cardholder has to change hotel/motel or pick-up location you must provide transportation to the alternate establishment and a three minute local or long distance telephone call.

## **11 Express Checkout**

- 11.1 This clause 11 only applies where you have been authorised to accept Credit Transactions to permit express check out from hotels or motels.
- 11.2 MasterCard and Visa have each arranged for their members a program that permits their Cardholders to check out of your establishment at the end of their stay without conducting the usual "checkout" process in person.
- 11.3 You agree to handle the express checkout Transactions as outlined in the Rules. You must retain and make available to us the itemised hotel/motel bill. All disputes will be resolved in accordance with the Rules as appropriate.

## **12 Vehicle and Equipment Rental Transactions**

This clause 12 only applies to merchants that provide rental for vehicles and other equipment including but not limited to cars, boats, tractors, trucks, ride-on mowers and planes.

- 12.1 Vehicle and equipment rental merchants may not include charges in the rental Transaction that represent any of the following:
- (a) the vehicle/equipment insurance deductible amount; or
  - (b) an amount to cover;

- (i) potential or actual damages when the Cardholder waives insurance coverage at the time of the rental;
  - (ii) additional costs which includes but is not limited to, parking tickets, traffic violations or vehicle/equipment repairs.
- 12.2 A charge for loss, theft or damage must be processed as a separate transaction from the underlying rental Transaction. The Cardholder must authorise the charge after being informed of the loss, theft or damage.
- 12.3 A charge for additional costs must be processed as a separate Transaction from the underlying rental Transaction. For additional costs relating to parking tickets or traffic violations you must support the charge with documentation from the appropriate authority including the license number of the rental vehicle, date, time, and location of the violation, statute violated, and amount of the penalty.
- 12.4 For additional costs relating to vehicle/equipment repairs you must provide the Cardholder with written confirmation of the damage upon return of the vehicle/equipment, or for vehicles/equipment returned using an express drop off facility a written confirmation receipt must be sent within 5 Business Days. You must provide a reasonable estimate of the cost of repairs and obtain agreement from the Cardholder prior to processing the Transaction. We recommend that the Transaction be card present and that you verify the identity of the cardholder to minimise the likelihood of Chargebacks. The transaction receipt must include a statement indicating that the estimated amount charged for repairs will be adjusted upon completion of the repairs and submission of the invoice for such repairs. The final amount of the Transaction relating to the repairs may not exceed the Merchant's Pre-Authorised amount. If the actual cost of repairs is higher than the estimated amount, you must perform a top-up Pre-Authorisation amount. You must also cancel any Pre-Authorisation(s) previously obtained that are no longer required, including if the actual cost of repairs is less than the estimated amount.

## **13 eCommerce Merchants**

- 13.1 This clause applies to eCommerce Merchants conducting eCommerce Transactions. To the extent that there is any inconsistency between this clause



and the other provisions of the Agreement, this clause will apply, except where the relevant provision of the Manual or guide specifically mentions this clause 13.

- 13.2 You agree to be responsible for all goods and services offered through your Website, all materials used or displayed at the Website, and all acts or omissions that occur at the Website or in connection with your Website.
- 13.3 The URL of your Website must be substantially similar to your trading name and your Website must be designed in such a way that a reasonable Cardholder is able to readily identify it as your Website without any confusion.
- 13.4 You will display the following on your Website:
  - (a) contact information, including your trading name, Australian Business Number (where required), trading address, telephone number, fax number, e-mail address and your country of domicile;
  - (b) a complete description of all goods and services you offer on your Website;
  - (c) a clear explanation of shipping practices and delivery policy;
  - (d) Transaction currency;
  - (e) total costs of the goods or services offered including all appropriate shipping/handling charges and taxes. Where the total cost of the Transaction cannot be ascertained advance you must include a statement to that effect and provide a description of the method that will be used to calculate it;
  - (f) customer service policies, including usual delivery timeframes, and the process if you cannot fill the order for any reason. You must advise your customers within two Business Days if goods are not available;
  - (g) wherever you present payment options, display images of Card Scheme logos that we supply to you;
  - (h) export restrictions (if known);
  - (i) refund/return policy;
  - (j) consumer data policy;
  - (k) privacy policy (which must be compliant with Privacy Laws);
  - (l) security capabilities and policy for transmission of payment Card details;

- (m) if you provide a currency converter, a disclaimer providing advice to cardholders that the converter provides an approximation of the currency only.

You must on request by us provide us with reasonable access to view, monitor and audit the pages of your Website.

- 13.5 You will meet the payment and delivery of goods or services as specified on your Website. Each merchant domain must utilise separate payment pages.
- 13.6 If you use a Payment Gateway solution other than a Bank of Melbourne hosted solution:
  - (a) we are not responsible for the functioning of the Payment Gateway;
  - (b) you will observe the conditions of any agreement in relation to the Payment Gateway;
  - (c) you must use a Bank of Melbourne 'Accredited' Gateway Provider/Data Processor. Failure to do so will result in termination of your Merchant Facility.
- 13.7 You will respond promptly to all customer inquiries, including cancellations and order changes.
- 13.8 You must provide a completed copy of the Transaction receipt to the Cardholder at the time the purchased goods are delivered or services performed, and advise the Cardholder to retain the receipt as proof that payment has been made. You may deliver the Transaction receipt in either of the following formats:
  - (a) electronic (e.g. email or fax); or
  - (b) paper (e.g. hand-written).
- 13.9 A Transaction receipt must contain the following information:
  - (a) the merchant name most recognisable to the Cardholder, such as:
    - (i) merchant "doing business as" name as used on your Website;
    - (ii) merchant "universal resource locator" (URL) if possible.
  - (b) Transaction type (purchase or credit);
  - (c) Transaction amount, indicated in Transaction currency;
  - (d) Transaction date;

- (e) unique Transaction identification number;
- (f) purchaser's/Cardholder's name;
- (g) authorisation code;
- (h) description of goods and services;
- (i) return/refund policy, if restricted;
- (j) cancellation policies.

13.10 You must not return the Cardholder's Card number to the Cardholder either online or on the Transaction receipt.

13.11 You must:

- (a) not substantially change your goods or services being sold on your Website or other material aspects of your Website from the time it was accepted by us;
- (b) keep all information on the Website true, accurate, current and complete;
- (c) not change your domain name without first obtaining our consent to the change of name; and
- (d) fulfil customer orders in a timely manner and adequately deal with customer's warranty or service requirements.

13.12 You are responsible for:

- (a) ensuring that the connection between your Website and us is operational. We do not warrant that the provision of the services will be continuous, uninterrupted or without errors;
- (b) ensuring that your Website is secure and that Card Information is encrypted during the exchange of Card Information between your Website and your Payment Gateway. The level of encryption is to be to our satisfaction as detailed in our document entitled "Web Site Requirements"; and
- (c) ensuring that any Service Provider you engage to participate in the payment process is a Bank of Melbourne Accredited Gateway Provider/Data Processor (details of accredited providers are available on request or at [bankofmelbourne.com.au](http://bankofmelbourne.com.au)). Inclusion of a gateway provider or data processor as accredited is not a representation or warranty by Bank SA that the particular gateway provider/data processor is compliant with PCIDSS requirements and does not limit your obligations under clause 21. Payment pages will be accredited

by us or a Bank of Melbourne Accredited Gateway Provider/Data Processor, and must adhere to our security requirements.

- 13.13 When approved for an eCommerce Merchant Facility, any Transactions received from Cardholders relating to the internet business for which it was approved must be processed using your approved eCommerce Merchant Facility.
- 13.14 If you are approved as a Bank of Melbourne merchant you must willingly, upon request, supply us with full details of your Service Providers, including but not limited to Web Hosting Provider, Shopping Cart Vendor System, SSL provider and expiration date of SSL certificate.
- 13.15 You must present all eCommerce Transactions to us with an eCommerce indicator using an Accredited Gateway Provider.
- 13.16 For transactions initiated via stored card information you must indicate that these are "Credential-on-file".

## **14 Quasi-Cash Transactions**

- 14.1 This clause applies to Quasi-Cash Merchants conducting Quasi-Cash Transactions. To the extent that there is any inconsistency between this clause and the other provisions of the Agreement, this clause will apply, except where the relevant provision of a Manual or guide specifically mentions this clause 14.
- 14.2 You must identify the Cardholder as follows:
  - (a) where the Card does not bear a photograph of the Cardholder, you must sight positive identification of the Cardholder, and indicate the type of identification sighted, including any serial number, on the Transaction receipt; or
  - (b) where the Card bears a photograph of the Cardholder, you must note on the Transaction receipt that you verified the Cardholder's identity by the photograph on the Card.
- 14.3 Where applicable, you must verify the following:
  - (a) the signature on the Card matches the signature on the Transaction receipt and, where clause 14.2(a) applies, on the identification presented; and
  - (b) where clause 14.2(b) applies, the Cardholder resembles the person depicted in any photograph intended to be used as identification on the Card.

- 14.4 You must do the following before completing the Transaction:
- (a) compare the first four digits of the embossed Card account number to the first four digits printed below the Card account number; and
  - (b) record the printed first four digits on the front of the Transaction receipt.
- 14.5 You must clearly disclose to the Cardholder any commission you charge for accepting a Quasi-Cash Transaction and include this in the total Transaction amount, before completing the Transaction.

## **15 Trustees**

- 15.1 This clause applies where you enter into this Agreement in the capacity as trustee of a trust.
- 15.2 You confirm that each of the following statements is correct:
- (a) the trust is validly formed. Any relevant trust document is valid and complies with the law;
  - (b) any copy of the trust document you have given us is a true and complete copy and discloses everything about the trust;
  - (c) you are properly appointed as sole trustee of the trust (and if more than one person has signed the application form as trustee, each of you have been properly appointed as trustees of the trust and there are no other trustees);
  - (d) you have always fully complied with the terms of the trust, and your duties and powers;
  - (e) you have a full right of indemnity from the trust assets in respect of the Agreement;
  - (f) you have properly signed the application form under the terms of the trust and in accordance with your duties and powers as trustee, or if there is any doubt and all beneficiaries have full legal capacity, you have obtained their consent;
  - (g) the Agreement and the Transactions entered into under it are for proper trust purposes;
  - (h) you have done everything required under the trust document to enter into the Agreement and the Transactions it contemplates;

- (i) none of the trust assets have been resettled or set aside;
- (j) the trust has not terminated nor has any event for the vesting of the assets occurred.

15.3 You promise the following:

- (a) you will comply with the terms of the trust and your duties as trustee of the trust;
- (b) you will use all equipment and carry out all Transactions in accordance with the Agreement exclusively for proper trust purposes;
- (c) you will not do anything which may result in the loss of your right of indemnity from the trust assets or the termination of the trust;
- (d) you will remain sole trustee of the trust (and if more than one person has signed the application form as trustee, each of you will remain as trustees of the trust and you will collectively continue as all of the trustees of the trust);
- (e) if, despite the above, you are replaced or joined as trustee, you will make sure the new trustee becomes bound to our satisfaction by the Agreement or a document and arrangement of identical effect;
- (f) you will not re-settle, set aside or distribute any of the assets of the trust without our consent unless compelled to do so by the current terms of the trust document.

## **16 Records**

16.1 You must:

- (a) maintain and retain in your possession (while complying with all applicable security requirements) your books of account and records (including all Transaction information, vouchers and tally rolls and other information this Agreement requires you to retain) relating to a Transaction for at least 18 months after the Transaction;
- (b) permit us to inspect and examine the books of account and records referred to in paragraph (a);
- (c) not disclose, give (other than to us or unless required by law), buy, sell or exchange a

Cardholder's name or Card details to any person (including in the form of mailing lists, tapes, computer data or any other media obtained by reason of a Card Transaction.) This clause does not prohibit you from providing Card number information to your agent solely to allow your agent to process Card Transactions to us on your behalf;

- (d) keep all systems and media containing a Card number, Cardholder or Transaction information in a secure manner to prevent access by or disclosure to anyone other than your authorised personnel or agent processing Card Transactions. If the item needs to be discarded, you must destroy it in a manner which makes the information unreadable;
- (e) provide us with all clear and legible documentation relating to a Transaction when requested. Otherwise we may Chargeback the Transaction to your Account; and
- (f) provide us with all financial information in relation to your business, including but not limited to, annual balance sheets and trading results, end of quarter results and 12 month cash flow projections, in a form acceptable to us, when requested.

16.2 You must also keep reasonable records about your compliance with this Agreement, including records about when you implemented a variation that we notify under clause 18, your PCIDSS compliance, and the staff training that is required under clause 3.3. You must retain these records for at least 6 years, and provide us with reasonable access to the records when we ask. Your obligations under this clause 16 survive termination of this agreement for any reason.

16.3 You undertake:

- (a) not to store Card Information, either written or electronically, without express permission from us;
- (b) to destroy all physical records containing Card Information 18 months from the completion of the transaction, including the final provision of goods and services bought for by the transaction in question, except where and to the extent that those records are required by law to be retained.

## 17 Creditworthiness of the Cardholder

You acknowledge that we do not guarantee any Cardholder's credit worthiness or their identity. You waive any right you may have against us by reason of any inference from the fact that a Cardholder has been issued with a Card or that a Transaction has been processed.

## 18 Variations

We may vary this Agreement at any time and will notify you of any changes as set out in the table below. Use of your Merchant Facility after notification of changes to the terms and conditions will constitute acceptance of those changes.

Type of Change	Time Frame	Method of Notification
New fee or charge (other than a government charge).	30 days in advance.	In writing or Electronically.
A new or varied government charge that directly or indirectly affects you.	In advance of the change, or as soon as practicable afterwards, unless the change has been publicised by a government agency, government or representative body.	In writing, Electronically or through an advertisement in a major newspaper.
Any other term or condition (including a variation of fees and charges).	At least 7 days in advance of the date of the change.	In writing, Electronically or through an advertisement in a major newspaper.

From time to time we may vary or supplement any Manuals, guides or procedures manuals that we provide to you, including by specifying new procedure documents or Manuals (in this clause 18 described as **'Changes'**). We may notify you of a Change Electronically. If we specify a date on which a Change commences, you must comply with the varied or supplemented Manuals, guides or procedures from the commencement of business on that date. You must comply with any other Change promptly.



Notwithstanding anything else in this clause 18, advance notice of a Change or variation may not be given in some circumstances, for example, when a Change is necessitated by an immediate need to restore or maintain the security of our systems or where you cannot be reasonably located.

## **19 Notices**

- 19.1 We may provide you notices in writing, including in your statement of account, by facsimile, newspaper advertisement or Electronically depending on the nature of the notice.
- 19.2 You can give us a notice by phone or by posting it in a prepaid envelope to the address in this booklet or by transmitting by facsimile to the number in this booklet, or by any other method we specify (for example, an authorised User logging on to an online service for accessing information about your merchant facility that is described in clause 9 and entering information to a web form).

We reserve the right to seek confirmation from you before acting upon any facsimile or other communication received, although you agree that we have no obligation to do so.

- 19.3 You agree that at all times during the term of this Agreement you will maintain a valid email address able to receive messages with a file size up to 8 megabytes including attachments and capability to download files from bankofmelbourne.com.au. You must give us at least 4 Business Days' notice if the email address will be changed for any reason.
- 19.4 It is your responsibility to make sure that this email address will be checked regularly on Business Days, because you will be taken to know about any email that is delivered to the email address under clause 19.5.
- 19.5 Notices given by us will be deemed to be received by you:
- (a) if by standard post, the earlier of when it is left at the relevant address or 5 Business Days after being deposited in the post;
  - (b) if by registered post, when recorded as being delivered; or

- (d) if by email, including where an email specifies an external address for accessing information, when the email enters the email server associated with your email address.

However, where receipt occurs after 5.00pm or on a day that is not a Business Day, it will be deemed received 10.00am on the following Business Day.

## **20 Warranties and Indemnities**

- 20.1 You must not make any warranty or representation whatsoever in relation to any of your goods or services which may create the impression that we are in any way bound by the warranty or representation.
- 20.2 You acknowledge that by processing a Transaction, or presenting to us a voucher (or audit log), you warrant to us that:
  - (a) all particulars relating to the Transaction are true and correct;
  - (b) the Transaction and any voucher (audit log) is valid; and
  - (c) the sale is not subject to any dispute, set off or counterclaim.
- 20.3 You indemnify and keep us indemnified against, and must pay us on demand against all claims, actions, suits, losses, defaults, liabilities, expenses, costs (including legal costs) and damages we may incur or suffer arising out of or in connection with:
  - (a) your failure to comply with any of your obligations under this Agreement (including under a Manual or guide we provide to you), whether caused by you or any of your officers, employees, servants, agents or contractors, including any procedures set out in the Manuals;
  - (b) any failure to pay any charges or fees payable by you under the Agreement;
  - (c) any dispute between you and a Cardholder;
  - (d) any liability arising from a Prepaid Sale and/or Chargeback;
  - (e) any error, negligence or fraud relating to a Transaction by you, your officers, employees, servants, agents or contractors;

- (f) any damage to, or loss of the Terminals due to neglect or misuse by you, or any of your officers, employees, servants, agents or contractors; or
- (g) any fees, fines or penalties (including but not limited to Card Scheme fines) that we are required to pay as a direct or indirect result of your failure to observe any of the procedures, requirements or obligations required to be complied with by you under the Agreement.

20.4 Each indemnity given by you under the Agreement is a continuing obligation and continues after the Agreement ends. It is not necessary for us to incur expense or make payment before enforcing the relevant indemnity.

20.5 With the exception of any guarantees, conditions, rights or warranties that are implied or imposed by law in relation to the Agreement and may not legally be excluded, we give no guarantee, warranty or representation in respect of any Transaction or Terminals and all other terms, conditions or warranties whether expressed or implied are expressly excluded.

20.6 Any payments due or made by you under this clause will be automatically increased by the amount of any GST liability incurred by us in respect of those payments, and you must also pay us that amount when we ask.

## **21 Fraud Prevention**

### **21.1 PCIDSS and PCI PA-DSS Compliance**

- (a) You must ensure your business and any Service Provider acting on your behalf is compliant to the PCIDSS and (to the extent applicable) PCI PA-DSS at all times.
- (b) Your merchant classification according to the PCIDSS will be determined at the discretion of Bank of Melbourne.
- (c) All costs in relation to complying with this clause 21 will be borne by you.
- (d) In the event that your business suffers or is suspected to have suffered an ADC, we may pass any penalties levied by the Card Schemes on to you and reserve the right to pass on any charges that relate to the investigation of an ADC.

## 21.2 PCIDSS Validation

- (a) If we determine that you are a Level 1, 2 or 3 merchant under the PCIDSS, you must, upon our request, validate your compliance with the PCIDSS on an ongoing basis.
- (b) Validation of compliance to the PCIDSS must be completed within 3 months of notification to you.

21.3 If you use any 'off the shelf' software that stores, processes or transmits Card Information during Authorisation or settlement, you must ensure that it has been certified by a PA-QSA as being compliant with the PCI PA-DSS.

For more information on the PCIDSS refer to the 'Your guide to the Payment Card Industry Data Security Standards' brochure provided with your confirmation letter or on the Bank of Melbourne website [bankofmelbourne.com.au](http://bankofmelbourne.com.au).

21.4 You must ensure that any software or hardware you purchase, create or otherwise utilise for the purpose of selling goods or services does not retain its original password before employing it for the acceptance of Transactions. You must also ensure that all system and/or software passwords are changed on a regular basis. You must ensure that digital devices (such as computers) that allow a choice of 'administrator' and limited user system privileges are not used with 'administrator' system privileges except during system maintenance that requires 'administrator' system privileges.

## 21.5 Account Data Compromise (ADC) Events

You must keep Card Information confidential and comply with the ADC procedures set out in this clause 21 and detailed in the booklet "Your Guide to the Payment Card Industry Data Security Standards" that we provide to you, immediately upon becoming aware that an actual or suspected ADC or breach of confidential Card Information has occurred, whether through your Service Provider or otherwise.

If there is an actual or suspected ADC or if there has been any actual or suspected Terminal manipulation:

- (a) You must give us and our agents full access to your systems and databases to facilitate a forensic analysis to ascertain:

- (i) what Card Information has been compromised;
  - (ii) what weaknesses in the system permitted the ADC or Terminal manipulation; and
  - (iii) whether Card Information was created, deleted, altered, copied or manipulated in any manner.
- (b) If you use the services of an external Service Provider, you must ensure that Bank of Melbourne and its agents are given full access to necessary outsourced components such as databases, web hosting systems, etc.
  - (c) You must pay all costs in connection with our analysis, investigation and resolution of the ADC or Terminal manipulation, and must also pay any fines imposed by a Card Scheme under clause 8.2(k).
  - (d) In order to continue processing Transactions, you will validate to our satisfaction that you are fully compliant with the PCIDSS as a Level 1 Merchant within 3 months of the ADC or the event(s) giving rise to the Terminal manipulation. All costs incurred by you as a result of your compliance with this clause 21 will be borne by you.

21.6 You agree:

- (a) that we may report all ADC events to Card Schemes and their members and may be required to report ADC events to law enforcement agencies and/or Australian regulators. You grant an irrevocable and enduring consent to us to disclose details of any such ADC (including information about you and your customers) to any such persons, agencies or regulators.
- (b) to irrevocably confer upon us the enduring right to contact any Service Providers that enable you to acquire Credit Transactions, Debit Transactions and Transactions relating to Charge Cards for the purposes of determining the extent of any actual or suspected ADC, assessing remedies for that ADC and assessing your level of compliance with the PCIDSS.

## **22 Code of Banking Practice**

- 22.1 This clause applies to you if you are an individual or a Small Business.
- 22.2 You acknowledge that the relevant descriptive information referred to in clauses 15.1 and 15.2 of the Code of Banking Practice is set out in our account terms and conditions booklets.

These booklets contain information regarding:

- account opening procedures;
- our obligations regarding the confidentiality of information about our customers;
- complaint handling procedures;
- bank cheques;
- the advisability of you informing us promptly when you are in financial difficulty; and
- the advisability of you reading the terms and conditions applying to the relevant banking service (which in relation to this facility means you should carefully read this booklet before accepting it).

Copies of these booklets are available on request. You acknowledge that each relevant provision of the Code of Banking Practice will apply to your facility from the date we adopt that provision.

## **23 Financial Crime Monitoring and Anti-Money Laundering**

- 23.1 In order for Bank of Melbourne to meet its regulatory and compliance obligations for anti-money laundering and counter-financing of terrorism, we will be increasing the levels of control and monitoring we perform.
- 23.2 You should be aware that:
- (a) Transactions may be delayed, blocked, frozen or refused where we have reasonable grounds to believe that they breach Australian law or sanctions (or the laws or sanctions of any other country). Where Transactions are delayed, blocked, frozen or refused, we and our accredited processors are not liable for any loss suffered by you (including consequential and indirect loss) whatsoever as a result;

- (b) we may from time to time require additional information from you to assist us in order to meet our anti-money laundering and counter-financing of terrorism obligations. This information may include “personal information” as defined by the Privacy Act 1988 (Cth). If we request such information you must provide us with the information immediately, or at least within 24 hours of such a request;
- (c) where legally obliged to do so or to otherwise assist in preventing unlawful activities, we may disclose the information gathered to regulatory and/or law enforcement agencies, other banks, other members of the Westpac Group, service providers who do things on our behalf or to other third parties; and
- (d) where we have reasonable grounds to believe that a suspicious matter has arisen in relation to the Merchant Facility, we are obliged to complete and render a report to the Federal Government (AUSTRAC). A suspicious matter includes any Transaction that we believe may be of relevance to the investigation or prosecution of any breach or attempted breach of an Australian law (including laws related to money laundering, tax evasion, financing of terrorism or the proceeds of crime).

23.3 You provide us with the following undertakings and indemnify us against any potential losses arising from any breach by you of such undertakings;

- (a) you will not initiate, engage in, or effect a Transaction that may be in breach of Australian law or sanctions (or the law or sanctions of any other country); and
- (b) the underlying activity/product for which the Service is being provided does not breach any Australian law or sanctions (or the law or sanctions of any other country).

## 24 Termination

- 24.1 The Agreement commences when you accept our offer in accordance with clause 1 and will continue until such time as it is terminated in accordance with this clause 24.
- 24.2 You may terminate this Agreement or use of an underlying Merchant Facility by providing us with 7 days written notice to the address in this booklet. Unless such notice is provided, your Agreement (including fees and charges) will continue to apply, notwithstanding that you may have returned Equipment to us or securely discontinued its use.
- 24.3 It is your obligation to reconcile your Account after termination of this Agreement and notify us of any discrepancies.
- 24.4 If for any reason there are discrepancies in your Account then our maximum aggregate liability to you for reimbursement will be limited to three months' worth of the monthly applicable charges.
- 24.5 We may terminate the Agreement or use of an underlying Merchant Facility at any time and for any reason, including, but not limited to the following:
- (a) a Merchant Facility does not comply with the Rules;
  - (b) we consider your ratio of Chargebacks to sales, whether by number or dollar value of Chargebacks, to be unusual or excessive;
  - (c) you have substantially changed your line of business, or the types of goods or services that you supply to your customers or clients without first notifying us and receiving consent;
  - (d) we have concerns about your solvency, or the solvency of your business;
  - (e) we have concerns about your ability to meet or repay the amounts of any Chargebacks that have been received, or that are likely to be received in the future conduct of your business;
  - (f) you have a significant adverse credit event recorded against you;
  - (g) we have reasonable grounds to suspect that you have fraudulently processed Transactions, or have knowingly allowed fraudulent Transactions to be processed through your Merchant Facility;



- (h) you or any of your Services Providers are not compliant with the PCIDSS or (to the extent applicable), PCI PA DSS;
- (i) you or any Service Provider that you use has suffered an ADC;
- (j) you have, or we suspect on reasonable grounds that you have, breached the Agreement.

24.6 We will endeavour to give you verbal or written notice before we terminate the Agreement or facility. If we are unsuccessful in contacting you, we can choose to continue to terminate the Agreement or Merchant Facility. However, we will give you subsequent written confirmation that the Merchant Facility has been terminated.

24.7 We may terminate or suspend the Agreement on the grounds that you have not processed Transactions through your Merchant Facility for a period of six (6) months. Under these circumstances we will advise you, in writing, of our intention to terminate and will allow you a period of 14 days from the date of our letter in which to contact us. After that time, we may terminate or suspend the Agreement or Merchant Facility without further notice.

24.8 Termination will be effective immediately and we are not obliged to accept any Transactions you process after the Agreement or facility is terminated.

24.9 You warrant to cease to use the Terminal Access Services immediately if this Agreement is terminated, we will be entitled to terminate the availability of the Terminal Access Services to you if that occurs.

24.10 For clarity, termination of a Merchant Facility or the Agreement does not affect any obligations incurred prior to termination. Clauses 6, 7, 8, 16, 20, 24, 25, 29, 32 and 34 survive termination.

24.11 On termination of the Merchant Facility or the Agreement you will immediately return all relevant Equipment, including guides, stationery and promotional material supplied by us. Fees and charges will continue to be incurred by you until the Equipment is returned to us. You authorise us to enter the premises where the Equipment is kept and take possession of the Equipment without notice to you in the event the Equipment is not returned to us immediately in accordance with this clause 24.11.

24.12 You acknowledge that a “combined terminated merchant file” is a list containing the business name and the names and identification of principals of merchants that have been terminated by acquiring financial institutions. You consent to us providing information about you and any persons named in your application for a Merchant Facility to MasterCard, Visa or any other Card Scheme for addition to the file if the Agreement is terminated (this may include sending information overseas). You acknowledge that this information will be available to any member of the Card Scheme(s) and may be used to assess subsequent applications for Merchant Facilities. You indemnify us against all claims, actions, suits, losses, defaults, damages and liabilities resulting from the inclusion of you or your principals on this file.

24.13 Without prejudice to any right or remedy of ours, we are entitled to charge you a termination fee for termination of the Agreement, at our discretion. You must promptly pay any such termination fee after we notify you of it.

## **25 Privacy Law and Use of Information**

25.1 You agree to comply with:

- (a) any Privacy Laws by which you are bound; and
- (b) any other privacy requirements notified by us to you.

25.2 You acknowledge that you do not rely on any information or representation supplied by us to you as advice regarding compliance with the Privacy Laws.

25.3 You warrant that you are aware of the Privacy Laws which apply to you in respect of this Agreement, and also warrant that, after the enquiry, you are not aware of having breached any of those Privacy Laws.

25.4 You agree that we may obtain from and disclose information to any person who issues a Card or Card Scheme for any purpose relating to the operation of your Merchant Facility that we deem necessary. Our rights under this clause continue after the Agreement is terminated.

25.5 You authorise us to obtain from any Card Scheme information (“your history”) relating to facilities you obtained or are obtaining from other suppliers.

- 25.6 We may use information about (or relating to) you, such as information from your application, or relating to your history or conduct of the facilities or transaction information processed using facilities we supply to you under the Agreement to:
- (a) help us run our business (for example, to help improve the performance of the business functions and activities of any members of the Westpac Group); or
  - (b) conduct data analytics activities to assist the Westpac Group and/or its customers.
- 25.7 We may also collect information about (or relating to) you from other parties for purposes described in clause 25.6.
- 25.8 We may disclose information about (or relating to) you that we collect from your application, or relating to your history or conduct of the facilities or transaction information processed using facilities we supply you under the Agreement to other parties on a confidential basis for the purpose of:
- (a) helping us run our business (for example, to help improve the performance of the business functions and activities of any members of the Westpac Group);
  - (b) conducting data analytics activities to assist the Westpac Group and/or its customers (that assistance may include providing customers with the results of data analysis but only on an anonymised basis); or
  - (c) enabling other parties to assist us with the provision, promotion, enhancement or improvement of goods or services.
- 25.9 We may disclose information about (or relating to) you that we collect from your application, or relating to your history or conduct of the facilities or transaction information processed using facilities we supply you under the Agreement to other parties on a confidential and anonymised basis for the purpose of enabling the provision, promotion, enhancement or improvement of goods or services offered by other parties.

25.10 These “other parties” referred to in clauses 25.7, 25.8 and 25.9 may be located overseas and include:

- (a) our agents, contractors and external service providers (for example, mailing houses and data analytics providers);
- (b) any person who is a card issuer, Card Scheme operator or otherwise involved in any Card Scheme or payment network, for any purpose relating to the operation of those schemes or payment networks (for example, Visa, Mastercard, China UnionPay, ePAL and card fraud detection agencies). This information may include information about terminating a Merchant Facility and the reasons for that termination. Another service provider may use this information (amongst other things) to determine whether or not to make facilities available to the merchant;
- (c) persons who you inform us supply services related to your Merchant Facility (including Ingenico, Hypercom, VeriFone, Global Blue, American Express or Diners Club);
- (d) other companies within the Westpac Group; and/or
- (e) other parties as otherwise permitted by law or our privacy policy.

## **26 Notifying us of changes**

26.1 You must notify us within 14 days of any changes in your company, trading name or address. You can do this by writing to us at the address in this booklet or by transmitting by facsimile to the number in this booklet. You must continue to notify us of any changes for a period of 12 months after the Agreement is terminated for any reason. We will not be responsible for any errors or losses where we have not received adequate prior notice. (Your obligation to notify a changed email address is under clause 19.3.)

26.2 You must not substantially change your line of business, or the types of goods or services that you supply to your customers or clients, without first notifying us and receiving our written consent. In addition, you must notify us immediately if the ownership or control of your business (including any delegation by way of power of attorney) or your ability to meet liabilities as and when they fall due changes. The new owner will need to apply for a new Merchant Facility with us if they wish to continue using our merchant services.

## **27 Charge Cards**

27.1 We may program the Terminals to accept Transactions by a Charge Card issued under a Charge Card Scheme in which you participate, provided you inform us in writing of your merchant number for that Charge Card Scheme.

27.2 Our only obligation to you in relation to any Charge Card Transaction conducted through a Merchant Facility is to transmit the particulars of the Transaction to the person, body corporate or association conducting the Scheme under which the Charge Card was issued.

27.3 We make no representations and give no assurances whatsoever in relation to:

- (a) the credit worthiness of any person presenting a Charge Card;
- (b) the performance of any agreement or arrangement between you and any person, body corporate or association conducting a Charge Card Scheme; or
- (c) settling the funds in relation to those Charge Cards to your account.

## **28 Third parties**

28.1 You will not present to us any Transaction on behalf of any third party without our prior approval.

28.2 We may pay a fee or commission to a third party who introduces you to us.

## **29 GST**

- 29.1 We may increase the amount (“original amount”) of any fee or other consideration payable by you under the Agreement which has not been specified to include GST by an additional amount so that the total amount payable by you is equal to the original amount plus the amount of any GST liability payable by us on the total amount.
- 29.2 You must pay at any time and in any manner requested by us any amount which we decide to be necessary to reimburse us for any direct or indirect increase resulting from any GST in the cost to us of:
- (a) making, maintaining or administering;
  - (b) any action relating to any property connected with; or
  - (c) carrying on any business connected with the supply of any facilities or property under the Agreement or any facilities provided under the Agreement.

## **30 Suspension**

- 30.1 We may suspend the facilities we supply to you under the Agreement without notice to you if we:
- (a) consider that we could suffer a loss as a result of your Merchant Facility continuing to operate;
  - (b) think we could be subject to fraud if we continue to supply the facilities;
  - (c) become aware of an event listed in clause 24.5;
  - (d) are unable to contact you to discuss a matter relating to the use of your Merchant Facility.

We will inform you as soon as practicable after we suspend your facilities under this clause.

- 30.2 Whilst the facilities are suspended, you will not submit Card Transactions for processing and we will not process any Card Transactions you submit.

## **31 Use of Trade Marks**

- 31.1 You agree:
- (a) to obtain our prior written consent before using any Trade Mark (which consent may be granted or withheld by us in our sole discretion);

- (b) to comply with any Trade Mark use guidelines or directions provided by us to you from time to time;
- (c) not to take any action which will adversely affect the value of the goodwill attached to the Trade Marks and/or our business.

31.2 If you have been approved to accept Debit Transactions:

- (a) We grant you a revocable non-exclusive, non-transferable sub-licence to use the eftpos Trade Marks in connection with the operation and promotion of eftpos Transactions, eftpos Cards, eftpos Terminals (as those words are defined in the ePAL Scheme Rules) and accounts and/or other services associated with them subject to your compliance with the terms of the Agreement and the Merchant Operating Guide;
- (b) You acknowledge that ePAL is the owner of the eftpos Trade Marks and that its right to use the eftpos Trade Marks does not confer any proprietary or other interest in the eftpos Trade Marks during or after the termination of the Agreement;
- (c) You agree to comply with any eftpos Trade Mark requirements as may be contained in the Manuals or Merchant Operating Guide from time to time and not to use the eftpos Trade Marks in a matter that is inconsistent with or detracts from any branding, eftpos Trade Mark requirements or marketing messages of ePAL.

This sub-licence to use eftpos Trade Marks:

- (a) will be revoked immediately on termination of your Agreement with us; or
- (b) may be revoked immediately upon written notice by us, upon which you agree to immediately cease using eftpos Trademarks and destroy all materials and paraphernalia that include the eftpos Trade Marks. You indemnify us for claims and demands made against or suffered or incurred by us arising directly or indirectly out of your use of ePAL's branding and/or eftpos Trade Marks where such use is in breach of the ePAL Scheme Rules.

## **32 Personal Property Securities Act**

- 32.1 If we determine that this Agreement (or a Transaction in connection with it) is, contains or creates a Security Interest for the purposes of the PPSA, you agree to do anything (such as obtaining consents, signing and producing documents, arranging for documents to be completed and signed and supplying information) which we ask and consider necessary to:
- (a) perfect any such Security Interest or otherwise to provide more effective security over the Equipment or any other personal property over which we have a Security Interest;
  - (b) to ensure that a Security Interest created under or connected with this Agreement is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
  - (c) to enable us to apply for any registration, or give any notification, in connection with any Security Interest created under or connected with this Agreement so that the Security Interest has the priority we require;
  - (d) to enable us to exercise our rights in connection with any Equipment or any other personal property over which we have a Security Interest;
  - (e) to bind you and any other person intended to be bound under this Agreement; or
  - (f) demonstrate your compliance with this Agreement.
- 32.2 You agree:
- (a) that we may complete any document on your behalf relating to this Agreement (such as Corporations Act forms, financing statements or financing change statements);
  - (b) that we may, at your expense, apply for any registration, or give any notification, in connection with any Security Interest created under or connected with this Agreement and for whatever class of collateral we think fit. You consent to any registration or notification by us, and agree not to make an amendment demand;
  - (c) not to register a financing change statement in respect of a Security Interest created under or connected with this Agreement without our prior written consent;



- (d) not to register, or permit to be registered, a financing statement or a financing change statement in relation to any Equipment in favour of a third party without our prior written consent;
- (e) that we need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) and 132(4) of the PPSA, or any other provision of the PPSA notified to you by us after the date of this Agreement;
- (f) that you may not exercise any rights under sections 142 and 143 (reinstatement of security) of the PPSA;
- (g) that neither we nor any receiver (or receiver and manager) appointed by us need give any notice required under the PPSA (including a notice of a verification statement); and
- (h) that you will not disclose or permit any party to disclose any information of the kind referred to in section 275(1) of the PPSA unless section 275(7)(b) or (e) of the PPSA applies.

32.3 In this clause 32, terms in italics have the meaning given to them in the PPSA.

### **33 Assignment**

33.1 You may not assign this Agreement to any other person without our written consent. We may at any time by not less than 14 days' prior notice to you assign our rights or novate our rights and obligations under the Agreement. We may also transfer our interest in the Agreement, or give another person an interest or security in the Agreement without getting your consent. You appoint us and any person authorised by us to be your attorney to sign any document or do anything necessary to give effect to the assignment, novation or transfer contemplated in this clause 33.2.

### **34 Our liability is limited**

You acknowledge that our liability for breach of any condition, right or warranty that cannot be excluded from the Agreement by law is limited at our discretion to the replacement or the repair of the Terminals, or the re-performance of the Terminal Access Service. To the extent permitted by Law and notwithstanding that we or any of our officers, employees, contractors or agents may be aware of the likelihood of such loss or damage, we will not be liable whether in contract, tort (including negligence) or otherwise to you or persons claiming through you for;

- (a) special, consequential or indirect or incidental loss or damage of any kind (including exemplary or punitive damages);
- (b) loss of business, profits or income whether actual or anticipated;
- (c) any disruption caused by:
  - a malfunction of a Merchant Facility; or
  - any period when the Merchant Facility is unavailable or you are waiting for a replacement Terminal;
- (d) any delay by us in crediting your Account.
- (e) our failure to credit your Account due to technical or administrative difficulties relating to the banking system used for the transfer of funds; or
- (f) termination of the Terminal Access Services for any reason.

This clause 34 applies notwithstanding that we or any of our employees, contractors or agents are aware of the likelihood of such loss or damage.

### **35 Governing Law**

The Agreement will be governed by and interpreted in accordance with the laws of New South Wales.

### **36 Reasonableness**

- 36.1 We will act fairly and reasonably in accordance with our legitimate business interests in exercising our rights and discretions under the Agreement.

### **37 What to do if you have a problem or dispute**

- 37.1 Getting your complaint heard:

We aim to resolve your complaint at your first point of contact with us. So please raise your complaint with any of the people handling your banking or phone the Bank of Melbourne Customer Contact Centre, 8.00am to 8.00pm (EST), Monday to Saturday on 13 22 66.

## 37.2 What to do if you are still unhappy:

If we haven't been able to deal with your issues to your satisfaction, there are a number of other bodies you can go to. One of these is the Financial Ombudsman Services (FOS). The FOS is a free service that considers complaints about banks and their related companies. Their contact details are:

### **Financial Ombudsman Service**

**Mail:** GPO Box 3, Melbourne VIC 3001

**Telephone:** 1300 780 808

**Fax:** (03) 9613 6399

**Internet:** [fos.org.au](http://fos.org.au)

### **Things you should know:**

This information is current as at August 2016 and is subject to change. MasterCard® is a registered trademark of MasterCard International Incorporated. American Express® is a trademark of American Express. UnionPay is a trademark of China UnionPay Co. Ltd.

Bank of Melbourne - A Division of Westpac Banking Corporation ABN 33 007 457 141 AFSL and Australian credit licence 233714

# Annexure to EFTPOS Merchant Agreement

## Direct Debit Request Service Agreement

BANK OF MELBOURNE - Merchant Services ABN 92 055 513 070 AFS Licence No. 240997, GPO Box 399, ADELAIDE SA 5001. User Ids; 161738, 161420, 029590, 029137, 004434, 161430, 161651, 161667, 161499, 161666, 161425, 055489, 106600, 161514, 162805, and 000439.

You have entered or are about to enter into an arrangement under which you make payments to us. You want to make those payments by use of the Direct Debit System.

This agreement sets out the terms on which we accept and act under a Direct Debit Request ("your Direct Debit Request") you give us to debit amounts from your account under the Direct Debit System. It is additional to the arrangement under which you make payments to us.

Please ensure you keep a copy of this agreement as it sets out certain rights you have against us and certain obligations you have to us due to giving us your Direct Debit Request.

### **When we are bound by this agreement:**

1. We agree to be bound by this agreement when we receive your Direct Debit Request complete with the particulars we need to draw an amount under it.

### **What we agree and what we can do**

2. We only draw money out of your account in accordance with the terms of your Direct Debit Request.
3. We give you a statement of the amounts we draw under your Direct Debit Request every month.
4. On giving you at least 14 days notice, we may:
  - change our procedures in this agreement;
  - change the terms of your Direct Debit Request; or
  - cancel your Direct Debit Request.

5. You may ask us to:
  - alter the terms of your Direct Debit Request;
  - defer a payment to be made under your Direct Debit Request by sending a letter to Merchant Support, GPO Box 2030, Melbourne VIC 3001; or by contacting the Merchant Helpdesk on phone number 1300 603 266.
6. You may:
  - stop a drawing under your Direct Debit Request;
  - cancel your Direct Debit Request by contacting the financial institution that manages the account your payments are debited from; or send a letter to Merchant Support, GPO Box 2030, Melbourne VIC 3001; or by contacting the Merchant Helpdesk on phone number 1300 603 266.
7. You may dispute any amount we draw under your Direct Debit Request by: Contacting the financial institution that manages the account your payments are debited from; or send a letter to Merchant Support, GPO Box 2030, Melbourne VIC 3001; or by contacting the Merchant Helpdesk on phone number 1300 603 266.
8. We deal with any dispute under clause 6 of this agreement as follows:
  - We investigate the dispute promptly;
  - We determine whether or not to accept the claim and pay the disputed amount; or
  - If we do not accept liability for all or part of the disputed amount, we provide you with full particulars of reasons including evidence of our authority to debit your account.
9. If the day on which you must make any payment to us is not a business day, we draw on your account under your Direct Debit Request on the next available business day.
10. If your financial institution rejects any of our attempts to draw an amount in accordance with your Direct Debit Request, we reserve the right to keep seeking that payment and additional amounts that are outstanding in accordance with your agreement.

11. We will not disclose to any person any information you give us on your Direct Debit Request, which is not generally available, unless:
  - you dispute any amount we draw under your Direct Debit Request and we need to disclose any information relating to your Direct Debit Request or to any amount we draw under it to the financial institution at which your account is held or the financial institution which sponsors our use of the Direct Debit System or both of them;
  - you consent to that disclosure; or
  - we are required to disclose that information by law.

### **What you should consider**

12. Not all accounts held with a financial institution are available to be drawn on under the Direct Debit System.
13. Before you complete your Direct Debit Request, it is best to check account details against a recent statement from your financial institution to ensure the details on your Direct Debit Request are completed correctly.
14. Please enquire of your financial institution, if you are uncertain when your financial institution processes an amount we draw under your Direct Debit Request on a day which is not a business day.
15. It is your responsibility to ensure there are sufficient clear funds available in your account, by the due date on which we draw any amount under your Direct Debit Request, to enable us to obtain payment in accordance with your Direct Debit Request.
16. We request you to direct:
  - all requests to stop or cancel your Direct Debit Request to us or your financial institution; and
  - all enquiries relating to any dispute under Clause 6 of this agreement to us or your financial institution.

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