

# Product Disclosure Statement



**SmartaPay**

**ABN: 52 097 607 451**

**Product Disclosure Statement  
31 May 2019**

This Product Disclosure Statement (PDS) for this product is current as at the above date.

This PDS provides information about the payment system provided by SmartaPay (**Payment System**) to assist you to make an informed decision about this product.

### Important Information

Please read this PDS carefully. Always retain a copy of this PDS and related documents for future reference.

**SmartaPay is a trading name of StrataPay Pty Ltd (ACN 123 768 294).**

### Financial Services Licence Holder

StrataPay Pty Ltd

ABN 52 097 607 451

AFSL # 247378

**SmartaPay** means StrataPay Pty Ltd trading as SmartaPay (ABN 52 097 607 451) or any of its officers, employees, servants, agents or contractors.

You can contact SmartaPay by the following means:

- Telephone on 1300 135 610
- Facsimile on (07) 5575 7433  
<http://www.smartapay.com.au>
- Writing to the address below:  
SmartaPay  
Locked Bag 9  
Gold Coast Mail Centre  
BUNDALL QLD 9726

### Product Description

The Payment System is an electronic bill paying service. The Payment Options some of which utilise non-cash payment facilities which are available to your customers as part of the Payment System are:

- (a) Internet (via your customer's or client's credit card)
- (b) BPAY®
- (c) POSTbillpay®
- (d) EFT
- (e) Direct Debit
- (f) Mail
- (g) Phone (with your customer's credit card)
- (h) In person.

Essentially, SmartaPay acts as a conduit for payments from your customers to you by utilising one of the Payment Options.

**Participating Entity** means you and any entity who joins SmartaPay and offers a choice to their customers to use the Payment System to facilitate non-cash payments.

### Terms and Conditions

The terms and conditions for the Payment System are set out in the:

- Merchant Agreement for Processing Credit Cards;
- User Terms and Conditions for the Payment System;
- Direct Debit Authorisation Terms and Conditions, and;
- BPAY Sub Biller Agreement.

In the event of any conflict between the terms and conditions of each of the sets of terms and conditions in this agreement the order of precedence for the purpose of construction shall be:

1. Merchant Agreement for Processing Credit Cards;
2. User Terms and Conditions for the Payment System;
3. Direct Debit Authorisation Terms and Conditions;
4. BPAY Sub Biller Agreement.

You are required to accept and abide by these terms and conditions and pay the relevant fees in order to utilise the Payment System.

Further, before using the payment options, your customers are required to be bound by the Payer Terms and Conditions for the Payment System which are obtained directly from the SmartaPay website <http://www.smartapay.com.au>. Your invoice will be

required to direct your customers to review and agree to the Payer Terms and Conditions for the SmartaPay Payment System at <http://www.smartapay.com.au> website.

In circumstances where your customers choose a payment option which is not “online” (for example, payment by telephone) they are able to call SmartaPay to request a copy of the Payer Terms and Conditions for the Payment System.

Where your customers choose the direct debit facility as a payment option, there are further terms and conditions contained within the Direct Debit – Service Agreement to which your customer is required to agree to be bound by prior to commencement of any direct debit transactions.

### **Costs**

Fees are charged in accordance with the Schedule of Fees and Charges.

### **Commissions**

No commissions are received by SmartaPay through your use of the facilities.

SmartaPay employees, shareholders and directors may be entitled to receive additional monetary or non-monetary benefits. Monetary benefits or rewards may include periodic bonuses, the level of which will depend on the overall performance of the SmartaPay business. Non-monetary rewards may include gift vouchers or film tickets as an example.

SmartaPay may pay commissions to a referring authorised representative up to half of the fees collected after costs have been deducted. For example, an Australia Post transaction where the fee is \$2.50 and cost is \$1.98 would attract a maximum commission of 26 cents.

### **Risks**

The Payment System is, for some payment options, operated through the internet. Further, the Payment System utilises individual payment reference numbers for each Participating Entity. Both the respective payment reference numbers and the security of the internet site must be protected from misuse by third parties.

Access to the Payment System may be unavailable in the event that the Internet and/or the phone banking facilities experiencing technical difficulties.

All Participating Entities will be allocated an individual reference number. This unique number will enable payments to be tracked to you through the Payment System. There is a risk however that where your clients and customers incorrectly record your reference number that their payments may not automatically be directed to you. This risk is mitigated somewhat through SmartaPay’s internet payment system which automatically shows your business name upon the correct reference number being used. The risk of incorrect input is also significantly minimised through the use of a check digit that forms part of the reference number. However, there is still a risk of mistaken numbers being inserted using any of the payment options. There may then be a need to conduct an investigation in order for payments to be correctly allocated.

Where payments are made by your customers via their credit card, direct debit or by cheque, there is always a risk of “charge backs” occurring or the payment being dishonoured. In such a case, SmartaPay may be required to deduct monies from your account to recover the amount of the charge back or other deduction (for example dishonoured cheque, direct debit refusal and/or any associated fees).

As a Participating Entity, you are entitled to log into the SmartaPay website with your email address and password. It is your responsibility to keep your login details secure.

For some payment options, SmartaPay relies upon third parties to operate or provide access to those payment options. Accordingly, any disruptions by these third parties to the services will impact on the ability of SmartaPay to provide those services to you and your clients.

### **Dispute Resolution**

SmartaPay has an internal dispute resolution procedure which is designed to be able to completely resolve any issues raised by you or your customers. If you have a complaint, you should contact SmartaPay on the contact details set out above.

If, despite our best efforts, you believe your complaint has not been satisfactorily dealt with, you may wish to contact an alternative dispute resolution scheme.

StrataPay is a member of the Australian Financial Complaints Authority, or AFCA (membership number 10048) which is an impartial, independent and free alternative dispute resolution scheme for resolving disputes. Before AFCA can investigate the matter, you must have first given us the opportunity to review it.

You can contact AFCA by:

Telephone: 1800 931 678 (free call)

Email: [info@afca.org.au](mailto:info@afca.org.au)

Website: [www.afca.org.au](http://www.afca.org.au)

In writing:

Australian Financial Complaints Authority

GPO Box 3

MELBOURNE VIC 3001

### **Further Information**

If you wish to discuss any information contained in this PDS or related documents, please contact us. For further information in relation to SmartaPay or the Payment System generally, please access our website at <http://www.smartapay.com.au>

# USER TERMS AND CONDITIONS

## USER TERMS AND CONDITIONS OF PAYMENT SYSTEM

### Intellectual Property Usage

1. SmartaPay and all associated trademarks and images are trademarks and images of SmartaPay.
2. You will not attempt to reuse, copy or reproduce in any form, whether in hard copy or electronically through any medium whatsoever, any part of the SmartaPay web sites or any other materials including, without limitation, any text, images, or other data contained on the sites, without express written permission from SmartaPay, other than for personal use.
3. While you may download materials from the sites for your own personal use and also have access to other SmartaPay materials via any of the Payment Services, you will not and must not distribute, alter, edit, modify or tamper in any way with data downloaded from the web sites or material provided by SmartaPay without the express written permission of SmartaPay.
4. No documents, reports or other data printed from the web sites or obtained from SmartaPay through any other Payment Service constitute official records.
5. You will not provide a link to any of the web sites or to any part of them or provide any other materials without the express written permission of SmartaPay.
6. You will not provide a link to or attempt to link directly to any page of the web sites other than web site home pages .
7. Subject to SmartaPay's Privacy Policy, any communication or material that you transmit to any of the web sites by electronic mail or send or communicate to SmartaPay or otherwise including questions, comments, suggestions or otherwise, will be treated as non-confidential and non-proprietary information and you authorise SmartaPay to use any such communication for any purpose it sees fit, except where expressly indicated otherwise.
8. Pursuant to SmartaPay's licence from Australia Post to use the POSTbillpay® logo ("**Logo**"), SmartaPay grants to you a sub-licence to use the Logo for the purposes of promoting your involvement with the POSTbillpay® Payment system. You must comply with any of Australia Post's Logo design usage requirements and corporate identity standards for the Logo that SmartaPay makes available to you.
9. You must barcode, brand and format the printed payment instructions of your bills in accordance with the specifications of Australia Post that SmartaPay will make available to you and include on your bills the required information to be used by your customers to enter details through a keypad or keyboard. In conjunction with Australia Post, you must monitor barcode readability on a regular basis or no less than quarterly. All bills issued by you which may be payable by a POSTbillpay® Payment and which contain the Logo will be subject to Australia Post's review and approval processes. You must treat the Australia Post barcode and billing specifications as confidential information and shall not disclose the confidential information to any person except to those specifically authorized by us or as is required by law.

### Secure Access Details

10. Other than by use in SmartaPay web sites of your valid email address and password or via use of your biller code, or phone access account or any other form of secure access details provided to you ("**Secure Access Details**"), you will not attempt to gain access to any reports, documents, statements, registers or any other information contained on the web sites or via any of the Payment Services without having the express authority from SmartaPay.
11. Any person who supplies SmartaPay with your Secure Access Details will be allowed to access the Payment Service and SmartaPay will be entitled to presume that person is you.
12. Your Secure Access Details must be kept safe. You must ensure that you and each person you authorise to use them do not tell or show those details to any other person.
13. If a record of your Secure Access Details is lost or stolen or if you are aware or suspect another person knows or has used those details without your authority, you will notify SmartaPay immediately.
14. SmartaPay may cancel your Secure Access Details at any time without notice for any reason.
15. You will be liable for any losses or damages (whether direct, indirect, consequential, or otherwise) resulting from any unauthorised access to your accounts if you or any authorised user contributed to the unauthorised access because:
  - i. your Secure Access Details were disclosed to another person;
  - ii. your Secure Access Details were identified by another person because a record was kept without a reasonable attempt being made to disguise it; or
  - iii. SmartaPay was not notified as soon as you became aware your Secure Access Details could be used by other person.

### Funds Availability and Clearance

16. Any payments received by SmartaPay from your customers with valid reference numbers are subject to clearance and will be credited to your account within three (3) banking days or as otherwise agreed with you. SmartaPay will not be liable for any loss or damage whatsoever resulting from a delay in processing of any payment.
17. In the event that a dishonour of a cheque or direct debit occurs, you will be charged a fee in accordance with the amounts set out in the Schedule of Fees and Charges. The charge will be made each time a dishonour occurs. Dishonoured direct debit requests will not be repeated without authorisation from you. In the event that SmartaPay is unable to make payment to you for any reason the payment will be refunded to your customer. In such a case you will be charged a Non-Payment fee in accordance with the amounts set out in the Schedule of Fees and Charges.

### Nominated Cards

18. You must only accept those cards nominated by SmartaPay from time to time as being acceptable cards ("**nominated cards**") as a means of payment by your customers.
19. The nominated cards are Visa, MasterCard, Diners Club. American Express and Diners Club may be available by separate agreement.

### General Obligations

20. You must:
  - i. immediately notify us of any change to your financial position which may affect your ability to perform your obligations under this agreement;
  - ii. not change your business name, or substantially change the type of goods and services you sell without obtaining the prior written consent of SmartaPay;
  - iii. not utilise the Payment Services on behalf of a third party;
  - iv. provide SmartaPay with all information and assistance reasonably required to perform its obligations and to deal with any queries in relation to the provision of the Payment Services;
  - v. comply with all relevant laws and contractual requirements in performing your obligations under this agreement;
  - vi. accept for payment of goods and services provided by you any valid and acceptable nominated card at your normal prices;
  - vii. perform all obligations (including, without limitation, supplying all goods and/or services) to the customer in connection with a sale before informing us about the bill payment transaction;
  - viii. not sell, purchase, provide or exchange any information or document or an account number relating to a customer, a customer's nominated card number or a transaction to any person other than:
    1. us;
    2. the agents you use in your business for an approved purpose;
    3. the card issuer; and
    4. as required by law;
  - ix. when a document is no longer required to be retained, destroy it in a manner which makes the information unreadable;
  - x. take reasonable steps to ensure that any information or document or an account number relating to a customer, a customer's nominated card number or a transaction, is protected from misuse and loss and from unauthorised access, modification and disclosure;
  - xi. not make any representation in connection with any goods or services which may bind SmartaPay or any card scheme organisation;
  - xii. not indicate or imply that SmartaPay or a nominated card issuer endorses any goods or services or refer to a nominated card in stating eligibility for goods, services or any membership;
  - xiii. not accept a nominated card or transaction which is of a type we have previously advised you is not acceptable to us;
  - xiv. not distinguish between issuers of a nominated card in processing a transaction;
  - xv. provide notice to any customer that you are responsible for the transaction, including for any goods and services provided, any payment transaction, related service inquiries, dispute resolution and performance of the terms and conditions of the transaction;
  - xvi. notify us if you become aware of or suspect fraud on the part of a customer;
  - xvii. establish a fair policy for dealing with refunds and disputes about transactions and provide information about that policy to customers;
  - xviii. retain for at least eighteen (18) months after a transaction the original receipt or a copy of any such document where permitted by applicable law;
  - xix. provide SmartaPay with evidence of the transaction, being the receipt, within seven (7) banking days if SmartaPay asks for the same and SmartaPay may charge a sales transaction back to you if you fail to do so to SmartaPay's satisfaction and the amount cannot be collected from the customer;
  - xx. not infer from the fact that a transaction has been processed or an authorisation has been given (either by telephone or electronically), that SmartaPay has guaranteed the customer's creditworthiness or identity, that the transaction is valid and acceptable or that you have complied with your obligations under this agreement.

### Warranty

21. In giving SmartaPay information about a transaction or otherwise, you warrant that:
  - i. all the particulars are true;
  - ii. the transaction is valid and acceptable; and
  - iii. the customer is not disputing the transaction or making a set-off or counterclaim.

### Payments

22. If your customers use the online payment service available on SmartaPay's web sites, these terms operate in conjunction with the terms and conditions applicable to the Secure Internet Payment Service provided by SmartaPay and Australia Post Terms and Conditions ("**Online Terms**").

23. If your customers use the telephone payment service provided by SmartaPay, these terms operate in conjunction with the terms and conditions applicable to the Direct Debit Request between your customers and SmartaPay or Australia Post Terms and Conditions ("**Phone Terms**").
24. If your customers use the postal payment service provided by SmartaPay, these terms operate in conjunction with the terms and conditions applicable to cheque accounts, return cheque fees as provided your financial institution ("**Post Terms**").
25. If your customers use the Australia Post payment service provided by SmartaPay, these terms operate in conjunction with the terms and conditions applicable to the Australia Post Payment Terms and Conditions ("**POSTbillpay® Terms**").
26. You acknowledge that Australia Post has no obligations to you with respect to payments collected using the POSTbillpay® Payment system and Australia Post is under no obligation to account to you for payments collected using the POSTbillpay® Payment system.
27. Other terms and conditions may also apply by operation of law and the code of banking practice.
28. SmartaPay is not liable for loss of funds through a breach of any of the Online Payment Terms, Phone Payment Terms, Post Terms, or POSTbillpay Terms.
29. SmartaPay at no time acts as agent for your customer in any respect in relation to the Online Payment, Phone Payment, Post Payment, or POSTbillpay Payment.
30. You are responsible for maintaining the confidentiality of your customers credit card, account or other financial details. You agree that you will not hold SmartaPay or any of its officers, employees, servants, agents or contractors liable, and you hereby release each of them, in respect of any misuse by any party of any such details (other than in respect of intentional misuse of those details by any of the parties released, in which case the party misusing those details is not released).
31. If your customers make an:
  - online payment ("**Online Payment**") using the web site;
  - telephone payment ("**Phone Payment**");
  - payment by post ("**Postal Payment**");
  - Payment using Australia Post ("**POSTbillpay Payment**")

unless otherwise proved for, the amount of the payment will be debited in favour of SmartaPay, and you agree to pay to SmartaPay, as a fee to receive the payment in accordance with these Terms and Conditions, a Transaction Fee and a Service Fee in accordance with the Schedule of Fees and Charges noted at the end of these Terms and Conditions. Alternatively, these fees will be deducted from the amount of any other payment due to you in accordance with these Terms and Conditions. In either case SmartaPay will forward the net amount of the payment to you.

#### **Payments by customers**

32. Any transactions between you and a customer that will utilise the Payment Services must be offered, recorded, billed and processed in Australian dollars.
33. A payment made by a customer is not valid if:
  - i. the payment is made with a card that is a card other than a nominated card;
  - ii. the payment is connected with an illegal transaction;
  - iii. the payment is made before or after any validity period indicated on a customer's card;
  - iv. the payment is not authorised by the customer;
  - v. the price charged for the goods or services is more than your normal price for them;
  - vi. another person or entity is to provide the goods or services the subject for the payment;
  - vii. you did not actually supply the goods or services to a genuine customer or have indicated your intention not to do so;
  - viii. the transaction did not relate to the actual sale of goods or services to a genuine customer;
  - ix. this agreement was terminated before the date of the payment;
  - x. the payment is made during a period in which your rights under this agreement were suspended;
  - xi. the customer disputes liability for the payment or transaction for any reason or makes a claim for set-off or a counterclaim;
  - xii. the payment causes you to exceed any transaction or volume limits which SmartaPay imposes at its discretion;
  - xiii. SmartaPay decides, at its discretion, that the payment is not acceptable.
34. SmartaPay may refuse to accept a payment if it is invalid or it may charge it back to you if it has already processed it.

#### **Payments to SmartaPay**

35. You must pay SmartaPay the fees, charges and other payments payable to SmartaPay.
36. You must sign and return to SmartaPay a Direct Debit Request authorising SmartaPay to directly debit your account in accordance with the Direct Debit Authorisation Terms and Conditions set out in this PDS, for the purposes of paying the amounts described in paragraph 35. Direct debits are not able to be drawn on statutory trust accounts
37. You authorise SmartaPay to deduct from any amount owed by SmartaPay to you or withdraw from your account, without notice, the following amounts:
  - i. all fees, charges and costs in connection with SmartaPay's provision of the Payment Services, including those set out in this PDS;
  - ii. any payments made to you which SmartaPay has determined to charge back to you;
  - iii. all stamp duties, taxes and other government charges levied on the Payment Services and this agreement;

- iv. any amounts found to be due to SmartaPay during an audit or check;
  - v. all fines, penalties or similar costs (however described) imposed on SmartaPay because of your conduct in relation to the provision of the Payment Services; and
  - vi. all other amounts you owe to SmartaPay under this agreement.
38. At SmartaPay's discretion, we may, if you have any liability to us under this agreement set-off that liability against any liability we have to you.

### **Privacy**

39. Our Privacy Policy as it appears from time to time is available at the SmartaPay website. SmartaPay will take all reasonable steps to abide by this policy and you agree to abide by its terms and conditions and to act in accordance with that policy when using the site, in addition to these Terms and Conditions.
40. By accepting these Terms and Conditions, you also consent to:
- i. the collection of a variety of personal information which is specified in greater detail in the Privacy Policy;
  - ii. use of the personal information for certain purposes specified in greater detail in the Privacy Policy;
  - iii. disclosure by SmartaPay of your information in certain circumstances specified in the Privacy Policy.

### **Disclaimers and Limitation of Liability**

41. While SmartaPay has made every effort to ensure that the information both provided directly to you or obtained and available from the web sites is free from error, SmartaPay does not warrant the accuracy, adequacy or completeness of that information. All information is subject to change without notice. SmartaPay recommends that you seek independent advice before acting upon any material contained on the web sites including all the Payment Services.
42. SmartaPay does not guarantee that the web sites will be free from viruses, or that access to the web sites will be uninterrupted. You are solely responsible for your own personal computer anti-virus and security measures.
43. In consideration for being given access to the web sites and/or access to Payment Services, you release and forever discharge SmartaPay, its officers, employees, servants, agents and contractors and each of them from all and any liability to you of any nature whatsoever in respect of any losses, damages (whether direct, indirect, consequential or otherwise), liabilities, claims or expenses whatsoever arising directly or indirectly from use by you or any other person of the web sites or any of the links provided in the web sites or reliance by you or any person upon information contained in or downloaded from the web sites including all the SmartaPay Payment Services.
44. Material on the web sites or provided in conjunction with the Payment Services may contain general information about SmartaPay's products and services. Unless expressly stated otherwise, this information:
- i. does not constitute an offer or inducement to enter into a legally binding contract; and
  - ii. does not form part of the terms and conditions for any SmartaPay products and services.
45. Liability of any of SmartaPay, its employees, servants, agents or contractors for any breach of any condition or warranty implied by law or otherwise, and which cannot be excluded, is limited to the extent possible, at the option of SmartaPay, to:
- i. the supply of the relevant goods and services again;
  - ii. repair of any goods; or
  - iii. payment of the cost of having the goods or services supplied again or repaired.

### **Indemnity**

46. You will be liable for and indemnify SmartaPay, its employees, officers, servants, agents and contractors and each of them jointly and severally against any loss, damage, expense or cost of any nature (including, without limitation, full solicitor and client legal costs on an indemnity basis) that any of them incurs or may incur (whether directly, indirectly, consequentially or otherwise) arising out of your use of the web sites or any of its contents or by use of the Payment Services or from any breach by you of any of these Terms and Conditions.
47. SmartaPay does not need to incur any expense nor make any payment before enforcing a right of indemnity conferred by the agreement.

### **Third Party Web Sites**

48. SmartaPay does not warrant the safety or accuracy of, and does not necessarily endorse the contents of, any third party web sites to which links have been provided on the site. If you do link to any third party sites from the web sites, you agree and acknowledge that you are doing so at your own risk.

### **General**

49. This agreement and your access to the web sites or access to any other Payment Services provided by SmartaPay to you may be terminated at any time by SmartaPay without notice. All restrictions, indemnities, licences granted by you and all disclaimers and limitations and limitations of liability by SmartaPay will survive termination, although you will no longer be authorised to access the web sites or use any of the Payment Services. Termination of this agreement will not affect our right to charge back payments or recover accrued fees, charges or costs. When this agreement ends or otherwise at SmartaPay's request, you must return all material SmartaPay has supplied in connection with your use of the Payment Services.
50. SmartaPay may vary a condition of this agreement or the provision of the Payment Services at any time by giving notice in writing ("Notice"). The Notice will be sent to your email address or any address supplied by you to SmartaPay in connection with these Terms and Conditions or arising out of the provision of the Payment Services. Use of any SmartaPay information, reporting or Payment Services after thirty (30) days from the date the Notice is sent to your email will indicate that you have accepted the variation.

51. You may not assign, transfer or otherwise deal with the obligations and liabilities imposed and the rights and benefits conferred on you under this agreement except with the prior written consent of SmartaPay.
52. This agreement and your relationship with SmartaPay pursuant to this agreement are governed by the laws of Queensland, Australia, and you unconditionally and irrevocably agree to submit to the non-exclusive jurisdiction of the courts of that state for the purpose of resolving any disputes to this agreement.
53. SmartaPay reserves any rights not expressly granted in these Terms and Conditions.
54. If you disagree with any of these terms or do not intend to be bound by any of these terms, you must cease the use of any services provided by SmartaPay including but not limited to web sites and Payment Services.
55. Should you continue to use any of the SmartaPay services despite the terms referred to in paragraph 54 of these Terms and Conditions, SmartaPay will consider you to be bound by this agreement.
56. You are over the age of 18 years and have power and authority to enter into this agreement at law. The person accepting these Terms and Conditions has authority to act on his or her own behalf and on your behalf to enter into and bind you to this agreement.
57. You may not assign your rights or obligations under this agreement without the written agreement of SmartaPay. If any part of these terms and conditions are unenforceable, the remainder will not be affected.
58. *You* hereby agree not to make or authorise a press release or other public statement concerning the *payment services* without prior written consent from *SmartaPay*. Any publicity or other materials containing references to anyone or anything connected with the *payment services* must not be distributed without *SmartaPay's* prior written consent.

#### **Approval and/or Termination**

59. Your use of the Payment Services payment service is subject to approval by SmartaPay. SmartaPay may decline an application without providing a reason. SmartaPay may terminate this Agreement and withdraw the Payment service without notice and without providing a reason.
60. SmartaPay may, at its own discretion, defer or withhold settlement of a payment if it believes that a payment is for or the result of an illegal activity or the service or goods provided are of a nature which is not approved by SmartaPay or it believes that the payment may be reversed or queried by the payer.
61. By using any SmartaPay information, reporting or Payment Services, you acknowledge and agree to the User Terms and Conditions for SmartaPay outlined above.

#### **Australia Post Mandatory Clauses**

62. You warrant that you do not currently have a direct contract with Australia Post for POSTbillpay® services and have not had such an agreement for the period 6 months prior to entering into this agreement.
63. Australia Post is under no obligation to approve your use of POSTbillpay® services and may, in its sole discretion, determine not to approve your use. If Australia Post does not approve your use of POSTbillpay® services SmartaPay may terminate this agreement without notice.
64. If in either Australia Post's or SmartaPay's opinion you are not considered an acceptable biller SmartaPay may terminate this agreement without notice.
65. Australia Post may, in its sole discretion, determine not to accept a particular payment method (for example, by cheque or by credit card) on your behalf if Australia Post believes the level of risk is unacceptable.

### Schedule of Fees and Charges

The price for the *payment service* is a charge for each transaction depending on the method of payment plus, if a credit card or charge card is used a service fee will apply. **Unless otherwise agreed**, the fees and charges are as follows:

Item	Basis	Fees
Establishment Fee	Once Off	As Agreed
Transaction Fee Australia Post	Per Payment	\$2.75
Transaction Fee all Other Channels	Per Payment	\$2.50
Visa and MasterCard	Of Payment Amount	1.80%
Diners Club	Of Payment Amount	2.65%
Amex	Of Payment Amount	2.35%
Cards issued outside Australia	In addition to applicable service fee	2.00%
SMS confirmation messages	Per message	\$0.30
Dishonoured payment	Per Item	\$35.00
Payment Reversal	Per Payment	\$10.00
Non-Payment to Biller (e.g. biller's bank account closed)	Per Payment	\$35.00
Manual Intervention to Repair or Return Payment	Per Payment	\$10.00

The prices for any fees or charges may be varied at our reasonable discretion at any time. We will provide you with a minimum of 30 days' notice of any changes to our fees and charges in writing, including by way of email or other electronic communication.

All prices are inclusive of GST.

## DIRECT DEBIT AUTHORISATION TERMS AND CONDITIONS

Set out below are the terms and conditions governing the debit arrangements between you and SmartaPay pursuant to the Direct Debit Request required to be signed by you prior to payments being made by your customers and clients through the Payment System.

### Definitions

*Account* means the account held at *your financial institution* from which we are authorised to arrange for *funds* to be debited.

*Authorisation* means, in respect of a transaction, our confirmation that, at the time at which confirmation is given the card has not been reported lost or stolen and that there are sufficient funds available in the account being accessed to cover that transaction.

*Banking day* means a day on which general banking business is conducted throughout Australia except for Saturdays, Sundays and national or state public holidays.

*Business day* means a day other than a Saturday or a Sunday or a public holiday.

*Chargeback* means a *reversal* of a *payment* made in accordance with any *financial institution* card association rules existing from time to time.

*Debit day* means the day that *payment* by *you* to *us* is due.

*Direct debit request* means the *direct debit request* between *us* and *you*.

*Funds* means any amount held on behalf of *you* by *your financial institution* or any amount held by the *payer* in their financial institution from which *SmartaPay* (*User Id: 056118*) may debit amounts.

*Notice* means a notice, request, consent and any other communication in connection with this agreement.

*Payer* means the person or persons who use the *payment service*.

*Payment* means a particular transaction where a debit is made from the *funds* or credit card account

*Payment service* means the provision of payment options facility through *SmartaPay* via its internet sites, by telephone or mail or its agents.

*Person* includes a firm, body corporate, unincorporated association, or authority. It also includes their successors and assigns.

*Receipt* means a document used to evidence a transaction other than a manual transaction.

*Reversal* means the reversal of a *payment* as a result of *chargeback* or dishonour of a *direct debit payment*.

*Service fee* means a charge for each *payment* processed in accordance with the Schedule at clause 13 of these *terms and conditions* where a credit or charge card is used.

*Subscription* means the annual amount paid to *SmartaPay* for use of the *payment services*. (if applicable)

*Terms and conditions* means these *Direct Debit Request* terms and conditions agreed by *you* to *us*.

*Transaction* includes a bill payment transaction.

*Transaction fee* means a charge for each *payment* processed in accordance with the Schedule at clause 13 of these *terms and conditions*.

*Us* or *we* means *SmartaPay* who *you* have authorised to receive *payments* by signing a *direct debit request*.

*You* means the customer who signed the *direct debit request*.

*Your financial institution* is the financial institution where *you* hold the *account* that *you* have authorised *us* to arrange to debit.

### 1. Debiting your account

1.1 By signing the *direct debit request*, *you* have authorised *us* to arrange for *funds* to be debited from *your account*. *You* should refer to the *direct debit request* and these *terms and conditions* for the terms of the arrangement between *us* and *you*.

1.2 We will only arrange for funds to be debited from your account as authorised in the direct debit request.

1.3 If the *debit day* falls on a day that is not a *banking day*, we may direct *your financial institution* to debit *your account* on the following *banking day*.

If *you* are unsure about which day *your account* has or will be debited *you* should ask us.

1.4 *Funds* deposited into *your account* by *SmartaPay* are subject to retrieval by *SmartaPay* plus any costs incurred in the event of a *chargeback* or *reversal* of the *payment* by the *payer's* bank or agent. In the event that the *direct debit request* is withdrawn then *you* will still be liable for *funds* affected in this manner.

1.5 A *service fee* may be applied for each *payment* processed by *SmartaPay*, unless paid by the *payer*.

1.6 A *transaction fee* may be applied for each *payment* processed by *SmartaPay*, unless paid by the *payer*.

### 2. Changes by us

2.1 We will not vary any details of this agreement or a *direct debit request* without giving you at least fourteen (14) days written notice. Current *terms and conditions* may be obtained by request from *SmartaPay*.

### 3. Changes by you

3.1 Subject to 3.2 and 3.3, *you* may change the arrangements under a *direct debit request* by contacting *us* on 1300 135 610.

3.2 If *you* wish to stop or defer a *debit payment* *you* must notify *us* in writing at least seven (7) days before the next *debit day*. This notice should be given to *us* in the first instance.

- 3.3 You may also cancel *your* authority for *us* to debit *your account* at any time by giving *us* seven (7) days notice in writing before the next *debit day*. This notice should be given to *us* in the first instance. Cancellation will not affect our right to debit *your account* for fees and *chargebacks*. A valid Direct debit request is a requirement for ongoing use of the SmartaPay payment services. By cancelling your Direct debit request you are terminating your access to the SmartaPay payment service. We still reserve the right to charge back payments or recover accrued fees, charges or costs in accordance with clause 49.

#### 4. Your obligations

- 4.1 It is *your* responsibility:
- to ensure the *direct debit request* is signed in terms of account signing authority (ie: joint accounts);
  - to ensure SmartaPay is advised if your account is transferred or closed;
  - to arrange a suitable alternative payment arrangement if the *direct debit request* is cancelled;
  - to ensure that there are sufficient clear funds available in *your account* to allow a *debit payment* to be made in accordance with the *direct debit request*.
- 4.2 If there are insufficient clear funds in *your account* to meet a *debit payment*:
- you* may be charged a fee and/or interest by *your financial institution*;
  - you* may also incur fees or charges imposed or incurred by *us*; and
  - you* must arrange for the *debit payment* to be made by another method or arrange for sufficient clear funds to be in *your account* by an agreed time so that *we* can process the *debit payment*.
- 4.3 You should check *your account* statement to verify that the amounts debited from *your account* are correct.
- 4.4 You warrant to SmartaPay that *you* have the power to operate the *account* in accordance with these *terms and conditions* and to appoint SmartaPay to provide *payment services*.
- 4.5 You also warrant that *you* will provide SmartaPay with the *subscription* for using the *payment services*.
- 4.6 If SmartaPay is liable to pay goods and services tax ("GST") on a supply made in connection with this agreement, then *you* agree to pay SmartaPay on demand an amount equal to the consideration payable for the supply multiplied by the prevailing GST rate. Any stamp duty payable on these *terms and conditions* or on any *debit payment* is *your* responsibility.

#### 5. Dispute

- 5.1 If *you* believe that there has been an error in debiting *your account*, *you* should notify *us* directly on 1300 135 610 and confirm that notice in writing with *us* as soon as possible so that *we* can resolve *your* query more quickly.
- 5.2 If *we* conclude as a result of our investigations that *your account* has been incorrectly debited *we* will respond to *your* query by passing an adjustment to *your account* (inclusive of any interest / charges accrued as a result of the incorrect amount being debited) accordingly. *We* will also notify *you* in writing of the amount by which *your account* has been adjusted.
- 5.3 If *we* conclude as a result of our investigations that *your account* has not been incorrectly debited *we* will respond to *your* query by providing *you* with reasons and any evidence for this finding in writing.
- 5.4 Any queries *you* may have about an error made in debiting *your account* should be directed to *us* in the first instance so that *we* can attempt to resolve the matter between *us* and *you*. If *we* cannot resolve the matter *you* can refer it to *your financial institution*.

#### 6. Accounts

- 6.1 You should check:
- with *your financial institution* whether direct debiting is available from *your account* as direct debiting is not available on all accounts offered by financial institutions.
  - your account* details which *you* have provided to *us* are correct by checking them against a recent *account* statement; and
  - with *your financial institution* before completing the *direct debit request* if *you* have any queries about how to complete the *direct debit request*.

#### 7. Confidentiality

- 7.1 *We* will keep any information (including *your account* details) in *your direct debit request* confidential. *We* will make reasonable efforts to keep any such information that *we* have about *you* secure and to ensure that any SmartaPay employees or agents who have access to information about *you* do not make any unauthorised use, modification, reproduction or disclosure of that information.
- 7.2 *We* will only disclose information that *we* have about *you*:
- to the extent specifically required by law; or
  - for the purposes of this agreement (including disclosing information in connection with any query or claim).
- 7.3 *We* will collect, use and disclose any personal information in accordance with SmartaPay's privacy policy which is available upon request from *you* to SmartaPay.

#### 8. Notice

- 8.1 Notice under this agreement shall be deemed to be served on a party hereto if given by mail, facsimile or email to the latest address for service as notified in writing to SmartaPay. It is the obligation of the parties hereto to notify a current address for service. In the case of mail service shall be deemed to be effected three business days from date of posting, in the case of facsimile service shall be deemed to be effected on the date and time as recorded in the facsimile report and

in the case of email service shall be deemed to be effected on the date and time of transmission of the message by the sender if the message is not rejected.

8.3 We shall give notice to *you* of any changes in *terms and conditions* in accordance with section 8.1.

## 9. Contact Information

9.1 You can contact SmartaPay through the following channels:

**Mail:** Locked Bag 9, GCMC, BUNDALL QLD 9726  
**Email:** [payments@smartapay.com.au](mailto:payments@smartapay.com.au)  
**Facsimile:** 07 5575 7433  
**Telephone:** 1300 135 610

## BPAY SUB BILLER AGREEMENT

<b>Customer</b>	Name	<b>As per Merchant Agreement</b>
	ACN/ARBN	<b>As per Merchant Agreement</b>
	Address	<b>As per Merchant Agreement</b>
	Address for service of notices	<b>As per Merchant Agreement</b>
<b>Master Biller</b>	Name	<b>StrataPay Pty Ltd</b>
	ACN/ARBN	<b>097 607 451</b>
	Address	<b>“MaxSoft House” Building 1 175 Varsity Parade Varsity Lakes Qld 4226 Australia</b>
	Address for service of notices	<b>Locked Bag 9 Gold Coast Mail Centre Bundall Qld 9726 Australia</b>
<b>Institution</b>	Name	<b>Commonwealth Bank of Australia</b>
	ABN	<b>48 123 123 124</b>
<b>MB Biller Code(s)</b>	74625, 74963, 74989, 74997, 160598, 252882, 393314, 393322, 535542, 535567, 535583, 535591, 535609, 28597, 40642, 40907, 74633, 74740, 74757, 74765, 74773, 74781, 74799, 74807, 74815, 74823, 74831, 74849, 74856, 74864, 74872, 74880, 74898, 74906, 74914, 74971, 160580, 524066, 524074, 535559, 565184, 758482	
<b>Account</b>	<b>As per Merchant Agreement</b>	
<b>Payment Methods</b>	Debit Only:	74625, 74963, 74989, 74997, 160598, 252882, 393314, 393322, 535542, 535567, 535583, 535591, 535609
	Debit & Credit:	28597, 40642, 40907, 74633, 74740, 74757, 74765, 74773, 74781, 74799, 74807, 74815, 74823, 74831, 74849, 74856, 74864, 74872, 74880, 74898, 74906, 74914, 74971, 160580, 524066, 524074, 535559, 565184, 758482
<b>Date of this agreement</b>	<b>As per Merchant Agreement</b>	

## 1 Purpose

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This agreement sets out the terms and conditions under which:

- (a) the Master Biller agrees to act on behalf of the Customer to facilitate the receipt of BPAY Payments by the Customer; and
- (b) the Customer agrees to accept BPAY Payments through the MB Biller Code.

## 2 Authorisation

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- 2.1 The Customer agrees to receive payments through **BPAY** Payments made using the Payment Methods.
- 2.2 The Customer authorises the Institution, and directs the Master Biller to authorise the Institution:
  - (a) to accept Payments for the Customer made using the Payment Methods; and
  - (b) to credit and debit to the Account all amounts contemplated under this agreement.
- 2.3 Without limiting clause 2.2 in any way, the Customer authorises the Institution to make debits and credits to the Account as and when necessary to effect Payments and Adjustments made using the Payment Methods, and whether that Payment or the original transaction to which that Adjustment relates occurred before, on or after the date of this agreement.
- 2.4 The Customer agrees to do all acts, including without limitation executing any documents and other instruments, and give any consents, necessary to give effect to the authorisations in clauses 2.2 and 2.3.
- 2.5 The Customer may not give the Institution any instruction or direction, whether concerning the operation of an Account or otherwise, which is inconsistent with any authorisation or other provision of this agreement, and the Institution is entitled to disregard any such inconsistent instruction or direction.
- 2.6 The Customer acknowledges for the benefit of the Master Biller and the Payer Customers of the Customer that a Payment or Adjustment made to the Institution in its capacity as representative of the Master Biller will be treated as having been received by the Customer on the Settlement Date for that payment, whether or not it is in fact received by the Customer on that day.
- 2.7 The Master Biller will pass on to the Customer any information about Payments or Adjustments relating to the Customer which is received by the Master Biller from the Institution within 24 hours of receipt of that information by the Master Biller.
- 2.8 This agreement does not confer any rights or obligations on any party with respect to **BPAY** View. If a Sub-biller wants to participate in **BPAY** View, it may only do so with the prior written agreement of the Master Biller on such conditions as the Master Biller and the Sub-biller may agree.

## 3 Obligations of the Master Biller

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The Master Biller must:

- (a) comply with its obligations under BPAY Payments as a Master Biller;
- (b) perform its obligations under BPAY Payments in relation to the Customer and this agreement with reasonable skill and care; and
- (c) use reasonable efforts to ensure that the Institution complies with its obligations in respect of Payments to the Customer.

## 4 Obligations of the Customer

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- 4.1 The Customer must:
  - (a) correctly and promptly credit or debit as the case may be the amounts of each Payment received by the Customer to the Customer's accounting record applicable to the Payer Customer, as identified in the information provided to the Customer by the Master Biller;
  - (b) promptly notify the Master Biller if it is unable to apply Payments to its Payer Customers for any reason;
  - (c) establish and maintain a fair policy for correction of errors and exchange and return of goods and services if a dispute arises in respect of a Payment;
  - (d) receive Payments for its own benefit and to its own accounts, not on behalf of third parties; and
  - (e) report to the Master Biller any fraud or suspected fraud involving the Customer or any of its Payer Customers.
- 4.2 The Customer consents, and agrees to ensure that its Payer Customers consent, to each information exchange necessary to allow:
  - (a) the Institution and other participants in the **BPAY** Scheme to accept and process Payments from the Payer Customers of the Customer;
  - (b) the information exchanges contemplated by this agreement to occur; and
  - (c) the Master Biller to comply with its obligations and exercise its rights under this agreement.
- 4.3 The Customer agrees to be bound by the adjustment rules set out in the document called "Sub-biller Operations Manual Part 1" as attached to this agreement and as varied or amended from time to time. The Customer acknowledges:
  - (a) receipt of the Sub-biller Operations Manual; and
  - (b) that the Sub-biller Operations Manual forms part of this agreement.

## 5 Customer acknowledgement

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- 5.1 The Customer acknowledges that a delay of any duration might occur and no rights arise as a result of a delay in the processing of Payment Instructions where:
  - (a) there is a public or bank holiday on the day or on the day after a Payer gives a Payer Direction;

- (b) a Payer Direction is received either on a day which is not a Banking Business Day or after the Payment Cut-off Time on a Banking Business Day. These Payer Directions will ordinarily be processed by the Payer Institution on the next Banking Business Day;
  - (c) another financial institution participating in **BPAY** Payments does not comply with its obligations under the **BPAY** Scheme; or
  - (d) the Customer fails to comply or is suspected on reasonable grounds of failing to comply with its obligations under this agreement, or is suspected on reasonable grounds of being involved in fraud, and payments to the Customer are suspended pending resolution of the issue.
- 5.2 The Customer acknowledges and accepts that its ability to receive Payments through **BPAY** Payments may be suspended or terminated, without prior notice to the Customer, if the participation of the Master Biller or the Institution in **BPAY** Payments is suspended or terminated.
- 5.3 If for any reason beyond the Institution's or Master Biller's control a Payer Customer effects a payment to the Customer through **BPAY** Payments by which that Payer Customer's Payer Institution receives value, but an equivalent value is not received by the Institution, the Institution is not liable to the Customer for that value not being credited to its Account, or if already credited, being debited to the Account by way of an Adjustment.

## **6 Promotions and advertising**

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- 6.1 The Master Biller is entitled to sub-license use of the Marks and grants the Customer a sub-licence to use the Marks including the **BPAY** logo and name in the manner specified in this agreement and the Standards Manual for the purposes of advertising its participation in and promotion of **BPAY** Payments to Payers and for no other purpose. The sub-licence granted pursuant to this clause terminates immediately on termination or expiry of the Master Biller's right to sub-licence use of the Marks or on termination or expiry of this agreement.
- 6.2 The Customer acknowledges that **BPAY** owns the Marks and agrees:
- (a) not to contest or in any way impair any rights of **BPAY** to the Marks; and
  - (b) at any time at the request of the Master Biller or Institution to include a statement on any packaging, promotional or advertising materials used in connection with **BPAY** Payments, including any in electronic form, that the Marks are being used by the Customer under the control of and with the authorisation of **BPAY** and acknowledging ownership of **BPAY** of the Marks.
- 6.3 Any use of the Marks by the Customer which is not in compliance with the requirements of this agreement or the Standards Manual and which is not promptly discontinued following written notice from the Master Biller to discontinue such use will be regarded as adequate ground for termination of this agreement.
- 6.4 The Customer is not entitled to license or assign the right to use any of the Marks whether by sale, consolidation, merger, amalgamation, operation of law or otherwise.
- 6.5 The Customer must use the appropriate denotation or legend of trademark registration or ownership in connection with the Marks, as required or consented to by the Master Biller.
- 6.6 If the Customer desires to use a denotation or legend of trade mark registration or ownership in connection with any mark (other than the Marks), but used in association with or on the same printed matter as the Marks, it may do so provided that:
- (a) such use will not adversely affect the rights of **BPAY** in the Marks;
  - (b) the specification for such use is notified in writing to the Master Biller, and the Master Biller gives its written approval to that specification prior to such use.
- 6.7 The Customer must not use the Marks in such a way as to create an impression that the goods or services offered by the Customer are sponsored, produced, offered or sold by the owner of the Marks. The Customer must not adopt "**BPAY**" or any other Mark as any part of the name of its business or apply it to any goods or services offered for sale.
- 6.8 The Customer must immediately on becoming aware of any infringement or potential infringement of the Marks notify the Master Biller.
- 6.9 If any claim is asserted or legal proceedings commenced against the Customer for alleged infringement of any rights held by a third party by reason of the use of the Marks, then the Customer must when it becomes aware of that claim or legal proceedings:
- (a) provide prompt written notice of such claim or proceedings to the Master Biller; and
  - (b) keep the Master Biller informed of all developments in respect of the claim or proceedings.
- 6.10 The Customer undertakes to:
- (a) inform its Payer Customers, in a manner which is not misleading, how they may use **BPAY** Payments (including giving them the MB Biller Code);
  - (b) use only literature or promotional materials provided or approved by the Master Biller for the above purposes and in accordance with the Standards Manual; and
  - (c) print the **BPAY** logo and the MB Biller Code on its customer invoices,
- until such time as this agreement is terminated.
- 6.11 The Customer agrees to give the Master Biller access to the literature and materials referred to in clause 6.10 upon receiving reasonable notice from the Institution of its desire to have such access from time to time.
- 6.12 The Customer consents to the use of its name and main trading logo in lists and in promotional material by **BPAY**, the Master Biller, Payer Institutions and the Institution.

## 7 Customer representations and warranties

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- 7.1 The Customer represents and warrants to the Master Biller and the Institution that:
- (a) it has all necessary power and authority to enter into this agreement and to perform its obligations under it;
  - (b) it will comply with all laws or industry codes applicable to the Customer in its exercise of its rights and performance of its obligations under this agreement; and
  - (c) all information provided at any time by the Customer to the Master Biller as contemplated by this agreement is true and accurate at the time it is provided. The Customer agrees to provide updated or corrected information to the Master Biller if any of the information provided by the Customer to the Master Biller at any time as contemplated by this agreement is no longer true and accurate.

## 8 Termination

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- 8.1 This agreement terminates automatically if the Master Biller Agreement between the Master Biller and the Institution is terminated and as at that date the Master Biller has not entered into a Master Biller Agreement with another financial institution.

## 9 Definitions

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- 9.1 The following words have these meanings in this agreement unless the contrary intention appears.

**Account** means the account named as such in the Details.

**Adjustment** means a transaction processed through BPAY Payments to reverse a previous Payment.

**Banking Business Day** means any day on which banks in Melbourne or Sydney are able to effect settlement through the Reserve Bank of Australia.

**BPAY** means BPAY Pty Limited ABN 69 079 137 518.

**BPAY Payments** means the electronic payments service promoted by BPAY and any other enhancement of or addition introduced by BPAY from time to time.

**BPAY Scheme** means

- (a) BPAY Payments;
- (b) BPAY View; and
- (c) any other enhancement of or addition to (a) or (b) above from time to time introduced by BPAY.

**BPAY View** means the service promoted by BPAY, which allows Payers to view Bills electronically.

**Customer** means the entity named as Customer in the Details.

**Details** means the section of this agreement headed "Details".

**Institution** means the financial institution named as Institution in the Details.

**Marks** means the trade and service marks owned by BPAY from time to time and set out in the Standards Manual.

**Master Biller** means the person named as Master Biller in the Details.

**Payer** means a person who uses BPAY Payments to make a Payment.

**Payer Customer** means a Payer who makes a Payment to the Customer.

**Payer Direction** means a direction from a Payer to their Payer Institution to effect a Payment through BPAY Payments, by or crediting an account or facility held by the Payer with that Payer Institution.

**Payer Institution** means a financial institution participating in the BPAY Scheme with whom a Payer has an account facility from which payments can be made and who receives a Payer Direction from that Payer.

**Payment** means a payment made, or to be made, by or on behalf of a Payer through BPAY Payments.

**Payment Cut-off Time** means, with respect to a Payer and its Payer Institution, the time on a Banking Business Day set from time to time by that Payer Institution as the time by which that Payer Institution must receive a Payer Direction for it to be processed by it on that day.

**Payment Methods** means the methods specified in the Details accepted by the Institution, which may be used by a Payer Customer to make a Payment through BPAY Payments.

**Settlement Date** means the date being in the case of a Payer Direction given by a Payer to its Payer Institution:

- (a) before its applicable Payment Cut-Off Time on a Banking Business Day, that day; or
- (b) after its applicable Payment Cut-Off Time on a Banking Business Day, or on a non-Banking Business Day, the next Banking Business Day.

**Standards Manual** means the BPAY Identity Standards Manual issued by BPAY prescribing the way in which the Marks may be represented, and provided to the Customer with this agreement (as may be amended from time to time).

### NOTE:

**The Sub-biller Operations Manual setting out adjustments and error correction rules for Sub-billers is available within the SmartaPay administration console.**

### EXECUTION CLAUSE

**Execution of the Merchant Agreement confirms acceptance of the BPAY Sub-biller Agreement Terms and Conditions as attached by both the Sub-biller and StrataPay Pty Ltd as per the Merchant Agreement**

# MERCHANT AGREEMENT FOR PROCESSING CREDIT CARDS

This agreement applies to all users of the SmartaPay Payment System who have been approved to accept Visa and MasterCard transactions. This agreement is made between (1) you, the merchant; (2) National Australia Bank Limited (NAB); and (3) StrataPay Pty Ltd trading as SmartaPay (SmartaPay).

## 1. Definitions

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1.1 Unless the contrary intention appears, the following words have these meanings in this Agreement:

**Banking Day** means a day on which banks are open for general banking business in Melbourne Australia except for Saturdays, Sundays and National Public Holidays in Australia.

**Card Schemes** means, unless otherwise agreed by the parties, Visa and MasterCard.

**Card Scheme Rules** means the rules and regulations which regulate participants in the Card Schemes.

**Cardholder** means the Person in whose name the Card has been issued.

**Chargeback** is the reversal of a sales transaction.

**Card** means a card that has been designated by the issuer as a Visa or MasterCard card or a card issued by any other card scheme which you have agreed to accept and we have agreed to process.

**Data Breach** means any occurrence which results in the unauthorised access by a third party to confidential data relating to card transactions stored by your business or any entity engaged by you to provide storage or transmission services in respect of that data.

**Data Security Standards** means the Payment Card Industry Data Security Standards ("PCIDSS") mandated by the Card Schemes for the protection of Cardholder details and transaction information, and any additional or replacement standards of which You are advised from time to time.

**NAB** refers to the National Australia Bank Limited, ABN 12 004 044 937.

**Payment Service** means the electronic payment service provided by SmartaPay.

**Person** includes an individual, firm, body corporate, unincorporated body or association, partnership, joint venture and any government agency or authority.

**Personal Information** refers to information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, which is received by You from any source as a consequence of the performance of the rights and obligations under this Agreement.

**PIN** means the personal identification number allocated by NAB, a card issuer or personally selected by the account holder.

**Privacy Law** means all legislation and principles relating to the collection, use, disclosure, storage and granting of access rights to Personal Information.

**Related Body Corporate** has the meaning given to it in the Corporations Act, 2001 (Cth).

**Relevant Law** means any:

- (a) statute, ordinance, code or other law including regulations and other instruments under them that are relevant to the obligations and rights of this Agreement; and
- (b) any code of practice, guidelines or standards issued by relevant regulators or industry bodies.

**SmartaPay** refers to StrataPay Pty Ltd trading as SmartaPay, ABN 52 097 607 451.

**Transaction Receipt** means a document used to evidence a transaction.

**We, Us and Our** means, collectively, NAB and SmartaPay.

**You and Your** means the Person to whom the Payment Service is provided by Us

## 2. Approval To Use Payment Services

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2.1 You acknowledge that:

- (a) the operation of this Agreement is conditional on NAB approving an application for SmartaPay to provide the Payment Services to You; and

- (b) in relation to information provided by You to SmartaPay in connection with Your application:
  - (i) SmartaPay may provide that information to NAB;
  - (ii) We may rely on such information as being complete, accurate and not misleading or deceptive; and
  - (iii) NAB is not obliged to verify the completeness or accuracy of the information it receives from SmartaPay; and
- (c) We may obtain from any Card Scheme or a person who is involved in any Card Scheme, any credit reporting agency or any other person, information about Your merchant history or Personal Information about You, a Related Body Corporate, Your officers, employees or agents for any purpose relating to the operation of those Card Schemes and we can use any such information to assess an application from us under clause 2.1(a);
- (d) We can disclose information about Your merchant history, a data breach, and relevant Personal Information in the following circumstances:
  - (i) to any Card Scheme or to any person who is involved in any Card Scheme, information about You for any purpose related to the operation of those schemes, card fraud detection agencies (including information about termination of merchant solutions and reason(s) for termination of NAB merchant solutions); and
  - (ii) where the law requires or permits us to do so; and
  - (iii) where we have reasonable grounds to believe that either you are involved in dishonest or criminal activity, are a victim of such activity, may have information relevant to an inquiry into such activity or have experienced a data breach, to any state or federal law enforcement or regulatory agency whether or not we have been requested by that agency to provide such information; and
- (e) we can disclose your information to any related entities of ours and to any outsourced service providers engaged by us (for example, mail houses, debt collection agencies (where necessary) or data analytics providers); and
- (f) the decision whether to approve your application is at NAB's sole discretion and the reason for any decision which is made may not be given to You;
- (g) an approval by NAB is specific to SmartaPay providing payment services to you and does not in any way constitute a representation by NAB that you will be able to use the services of another payment service provider or of NAB directly should you cease using SmartaPay's payment services for any reason; and
- (h) any information obtained by NAB during its assessment of an application under clause 2.1(a) is and remains confidential to NAB and will not be shared with You. NAB is bound by Card Scheme Rules and all correspondence and discussions between Card Schemes and NAB are confidential as between NAB and the Card Schemes.

2.2 You represent and warrant that:

- (a) any information You provide to SmartaPay in connection with an application for SmartaPay to provide the Services is complete, accurate and not misleading or deceptive; and
- (b) if You have disclosed Personal Information to SmartaPay in connection with the application under clause 2.1(a), You have obtained the relevant individual's prior consent to the disclosure and otherwise complied with Your obligations under Privacy Law; and
- (c) You are able to satisfy Your obligations and responsibilities under this Agreement.

2.3 You acknowledge and agree that:

- (a) SmartaPay and NAB are authorised to obtain from third parties financial and credit information relating to You in connection with our decision to approve Your application and in respect of our continuing evaluation of Your financial and credit worthiness; and
- (b) any information collected by SmartaPay may be disclosed by us to NAB.

2.4 The Parties agree that no Party is or will be bound by this Agreement unless and until NAB has confirmed its approval for SmartaPay to provide the Payment Services to You.

### 3. Your Obligations

3.1 You:

- (a) must immediately notify SmartaPay of any change to Your financial position which may affect Your ability to perform Your obligations under this Agreement; and
- (b) must provide SmartaPay with prior written notice of any change in your place of business not carry on business in a place which has not been approved by SmartaPay and must not move Your place of business without our prior written consent; and
- (c) must not change Your business name or ownership of Your business without giving SmartaPay prior notice and not substantially change the type of goods and services You sell without our prior written consent; and
- (d) only submit a sales transaction where You are the supplier of the goods and/or services; and
- (e) not submit transactions on behalf of a third party. For the avoidance of doubt, this includes submitting transactions for goods or services sold on another Person's website; and
- (f) must allow the employees, contractors or agents of NAB or those of any Card Scheme reasonable access to Your premises during normal business hours to check Your compliance with this Agreement, the Data Security Standards or for the purposes of the relevant Card Scheme Rules; and
- (g) must provide SmartaPay and NAB with all information and assistance reasonably required to perform their obligations and to deal with any queries in relation to the Payment Service; and
- (h) must comply with all applicable Card Scheme Rules and Relevant Laws and contractual requirements in accepting card payments and performing Your obligations under this Agreement; and
- (i) will observe and implement the fraud prevention procedures set out in the manuals, guides or directions provided to You, unless otherwise mutually agreed to by the parties.

## Data Security Standards

- 3.2 This clause applies to you if collect payment data directly from a cardholder or store any cardholder data. In addition to the other provisions of this agreement, you acknowledge and agree:
- (a) you must protect stored cardholder data, regardless of the method used to store such data. Data storage also includes physical storage and security of cardholder data. Some examples of other data storage which must be secured include an access or excel database and hard copy files. Storage should be kept to the minimum required for business, legal, and/or regulatory purposes; and
  - (b) you must not store the personal identification number (PIN) or sensitive authentication data after authorization (even if encrypted); and
  - (c) if SmartaPay or NAB tell you that you must comply with the Payment Card Industry Data Security Standards, you must, at your cost, successfully complete the protocols for PCIDSS within the time frame stipulated by SmartaPay or the Card Schemes. You acknowledge and agree that if you fail to do so:
    - (i) SmartaPay or NAB may terminate the merchant services; and
    - (ii) you are liable for any fine imposed upon NAB by the Card Schemes as a result of your failure to comply; and
    - (iii) you are liable for any fines which the Card Schemes levy in the event that you suffer a card data compromise incident, and have not complied with the PCIDSS Accreditation program; and
  - (d) NAB is obliged to report all Data Breach events to Card Schemes, law enforcement agencies and/or Australian regulators. You grant irrevocable and enduring consent for NAB to release details of any such Data Breach to the aforementioned bodies; and
  - (e) if you have suffered a Data Breach:
    - (i) you must give NAB and its agents full access to your systems and databases to facilitate a forensic analysis to ascertain:
      - (A) what card data has been compromised; and
      - (B) what weaknesses in the system permitted the unauthorised access to the data base; and
      - (C) whether card data was created, deleted, altered, copied or manipulated in any manner; and
    - (ii) all costs of the forensic analysis must be paid by you; and
    - (iii) in order to continue processing card transactions, you must undergo a full Payment Card Industry Data Security Standard ("PCIDSS") accreditation. All costs of this accreditation exercise must be paid by you

## Your Duties to Cardholders

- 3.3 Subject to the other provisions of this Agreement, You:
- (a) must accept any valid and acceptable Card in a transaction; and
  - (b) must only send SmartaPay a sales transaction when you have committed to provide the goods and services to the customer; and
  - (c) must not accept a Card in a credit card transaction for the purpose of giving a Cardholder cash; and
  - (d) must perform all obligations (including supplying all goods and/or services) to the cardholder in connection with the sale; and
  - (e) must not sell, purchase, provide or exchange any information or document relating to a Cardholder's account number, or Card number, or a transaction, to any Person other than:
    - (i) SmartaPay;
    - (ii) NAB; and
    - (iii) the card issuer; or
    - (iv) as required by law; and
  - (f) must destroy any document that is no longer required to be retained by applicable law or card scheme rules, in a manner which makes the information unreadable; and
  - (g) must take reasonable steps to ensure that the information and documents mentioned in (e) are protected from misuse and loss and from unauthorised access, modification or disclosure; and
  - (h) must not make any representation in connection with any goods or services which may bind SmartaPay, NAB or any Card Scheme; and
  - (i) must not indicate or imply that we, NAB or any Card Scheme endorse any goods or services or refer to a nominated Card in stating eligibility for goods, services, or any membership; and
  - (j) must not accept a Card or a transaction which is of a type You have been previously advised is not acceptable; and
  - (k) must prominently and unequivocally inform the Cardholder of Your identity at all points of Cardholder interaction (including on any relevant web site, promotional material and invoice) so that the Cardholder can readily distinguish You from SmartaPay, any supplier of goods or services to You, or any other third party; and
  - (l) must provide notice to any Cardholder with whom You enter into a transaction that You are responsible for that transaction, including for any goods or services provided, any payment transaction, related service enquiries, dispute resolution, and performance of the terms and conditions of the transaction; and
  - (m) must not unfairly distinguish between issuers of a Card when accepting a transaction; and
  - (n) must not refuse to complete a transaction solely because a Cardholder refuses to provide additional identification information in circumstances where we do not require You to obtain it; and
  - (o) if You collect or store Cardholder information, You must comply with any Data Security Standards notified to You; and
  - (p) You must not transfer or attempt to transfer financial liability under this Agreement by asking or requiring a Cardholder to waive his or her dispute rights.

## Recurring Transactions

- 3.4 You may only process a transaction as a recurring transaction if:
- (a) you have obtained cardholder permission (either electronically or in hardcopy) to periodically charge for a recurring service; and
  - (b) you retain this permission for the duration of the recurring services and make it available to us on request; and
  - (c) you provide a simple and accessible online cancellation procedure, if the cardholder request for the goods or services was initially accepted online.

## Indemnity

- 3.5 You agree to indemnify and hold NAB harmless from and against any fines imposed on NAB by a Card Scheme because of your conduct in relation to the merchant services, including any fines imposed as a result of an unacceptable rate of chargebacks.
- 3.6 You agree to indemnify and hold SmartaPay harmless from and against any fines imposed on SmartaPay by NAB or a Card Scheme because of your conduct in relation to the merchant services, including any fines imposed as a result of an unacceptable rate of chargebacks.

## 4. Website Requirements

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- 4.1 Unless You are otherwise notified in writing, You must, before You accept any electronic commerce transaction over the Internet, establish and maintain at Your own expense a web site that complies with the requirements of clause 4.2.
- 4.2 The web site must clearly display the following information:
- (a) Your business name (and Australian Business Number as applicable); and
  - (b) the address of Your approved place of business; and
  - (c) Your business contact details, including telephone numbers and an email address; and
  - (d) a complete description of the goods and services available for purchase on Your web site with the price advertised in Australian dollars or, if we have agreed that you can process transactions in another currency, that currency ; and
  - (e) details of Your return and refund policy, including how a transaction can be cancelled by a Cardholder; and
  - (f) details of Your delivery times for goods and services. Delivery times are to be appropriate for the type of business carried on by You. If the delivery is to be delayed, the Cardholder must be notified of the delay and an option provided to them to obtain a refund; and
  - (g) details of any Australian export restrictions (if applicable); and
  - (h) details of Your privacy policy and how You intend to deal with, or share, Personal Information obtained from and about the Cardholder; and
  - (i) a description of the measures You have to maintain the security of:
    - (i) Cardholders' account data; and
    - (ii) any other information which, by notice, we or NAB require You to display from time to time; and
  - (j) any other information required for the purpose of complying with card scheme rules.
- 4.3 You must provide us reasonable access to view, monitor and audit the pages of Your web site.
- 4.4 Your web site payments page must be protected by Secure Sockets Layer or any other form of security method approved in writing by us.

## 5. Card Acceptance Requirements

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- 5.1 You must:
- (a) use reasonable care to detect forged or unauthorised signatures or the unauthorised use or forgery of a Card; and
  - (b) notify SmartaPay if You become aware of or suspect fraud on the part of a Cardholder; and
  - (c) not deliberately reduce the value of any one transaction by:
    - (i) splitting a transaction into two or more transactions; or
    - (ii) allowing a Cardholder to purchase items separately; and
  - (d) establish a fair policy for dealing with refunds and disputes about transactions and include information about that policy on Transaction Receipts as required by SmartaPay; and
  - (e) only submit a transaction as a refund to a Cardholder if it is a genuine refund of a previous sale transaction. The refund must be processed to the same card that was used in the original sales transaction and be for the original sale amount; and
  - (f) give refunds for transactions by means of credit and not in cash or cheque; and
  - (g) not process a refund transaction as a way of transferring funds between Your accounts; and
  - (h) if a transaction for a sale does not cover the full amount of the sale:
    - (i) in the situation in which the Card is used to make a deposit or pay an instalment You may accept the Card in payment of all or part of the outstanding balance; and
    - (ii) in any other circumstance You must obtain the balance due at the time the sale is completed in cash; and
  - (i) not state or set a minimum or maximum amount for a Card transaction without our prior written consent; and
  - (j) not ask a Cardholder to reveal their PIN or any other secret identifier; and
  - (k) contact SmartaPay for instructions if the identification of a Cardholder or the validity of the Card is uncertain; and
  - (l) not knowingly submit for processing any transaction that is illegal or that You should have known is illegal.

- 5.2 For remote transactions, you must:
- (a) take reasonable steps to verify the identity of the Person You are dealing with, in order to confirm that they are the genuine Cardholder; and
  - (b) record reasonable identification details of the Person You are dealing with, as well as the commencement and expiry dates of the Card.

## **6. Surcharging**

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### **Amount of surcharge**

- 6.1 Where you elect to charge a cardholder a surcharge in respect of a transaction, you must not impose a surcharge in excess of the reasonable cost of card acceptance.
- 6.2 Upon request by us or any card schemes, you must produce supporting information to substantiate your costs of card acceptance. Where the card scheme dictates the format of the required substantiation, eg. through use of a "reasonable cost of acceptance calculator", you must provide details of your costs in the required format.
- 6.3 Where required by a card scheme, you must submit, at your cost, to an audit of your costs of card acceptance by an independent auditor approved by the card scheme requiring the audit. The audit must be completed and results reported back to the relevant card scheme within the timeframe specified by the card scheme.
- 6.4 Where, following an investigation into your surcharging and cost of card acceptance, we or a card scheme determine that the amount that you are surcharging exceeds the reasonable costs of card acceptance, we may by 30 days notice to you require you to reduce your surcharge level to an amount that does not exceed the reasonable costs of card acceptance.
- 6.5 Without limiting any other rights that we may have under this agreement, we may, by notice to you, terminate this agreement if, following receipt of notice under clause 6.4, you fail to reduce your surcharge level to an amount that does not exceed the reasonable costs of card acceptance.
- 6.6 You acknowledge that excessive surcharging by you could expose NAB to fines from card schemes. You agree to indemnify NAB against any fines imposed by card schemes in relation to your surcharging practices.
- 6.7 You acknowledge that card issuers may from time to time change the classification of a credit card (ie. 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 (ie. standard or premium) on which you have based the surcharge will be same as the classification on which you are charged your merchant service fee in relation to the same transaction.

### **Disclosure of surcharge**

- 6.8 You must clearly disclose to the cardholder before the transaction is completed any surcharge that you will charge for completing the transaction, and do it in such a way that allows the transaction to be cancelled without the cardholder incurring any cost.
- 6.9 You must display on the payment page on your website a notice stating:
- (a) that you charge a surcharge; and
  - (b) the exact amount or percentage of the surcharge.
- 6.10 You must not represent or otherwise imply that the surcharge is levied by a card scheme or by us or any other financial institution.

### **Definitions**

- 6.11 "Surcharge" means any fee charged by a merchant to a cardholder that is added to a transaction for the acceptance of a card.
- 6.12 Costs that form your "reasonable costs of card acceptance" will be determined having regard to the Reserve Bank of Australia's Guidance Note: Interpretation of Surcharging Standards, as amended or replaced from time to time

## **7. Transaction Receipt**

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- 7.1 Unless we have agreed that we will provide the transaction receipt to the cardholder, You must give the Cardholder a copy of the Transaction Receipt for each transaction, but You must not charge a fee for doing so.
- 7.2 If You are notified that You must prepare the Transaction Receipt, You must ensure the information contained in the Transaction Receipt:
- (a) is identical with the information on any other copy; and
  - (b) legibly includes the information notified to You.
- 7.3 You must provide SmartaPay with the Transaction Receipt and any other required evidence of the transaction within seven (7) days if You are asked by SmartaPay to provide it.
- 7.4 If You wish to change Your Internet or email address, or telephone number appearing on the Transaction Receipt, You must notify SmartaPay in writing at least fifteen (15) Banking Days prior to the change taking effect.
- 7.5 You must retain sufficient information about a transaction in order to be able to prepare the Transaction Receipt whether processed manually or electronically for a period of 30 months from the date of the transaction or such other period required by Law or notified by SmartaPay.

- 7.6 At the end of the 30 month or other period referred to in clause 7.5, You must destroy any information about the transaction. You must ensure that any document containing any Cardholder account number is securely destroyed in a manner which makes that information unreadable.

## **8. Invalid Or Unacceptable Transactions**

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- 8.1 A transaction is not valid if:
- (a) the transaction is illegal as per applicable laws; or
  - (b) if applicable, the signature on the voucher, Transaction Receipt or authority is forged or unauthorised; or
  - (c) the transaction is before or after any validity period indicated on the relevant Card; or
  - (d) You have been told not to accept the Card; or
  - (e) the transaction is not authorised by the Cardholder; or
  - (f) the particulars on the copy of the voucher or Transaction Receipt given to the Cardholder are not identical with the particulars on any other copy; or
  - (g) the price charged for the goods or services is inflated to include an undisclosed surcharge for card payments; or
  - (h) another person has provided or is to provide the goods or services the subject of the transaction to a Cardholder; or
  - (i) You did not actually supply the goods or services to a genuine Cardholder as required by the terms of the transaction, or have indicated your intention not to do so; or
  - (j) the transaction did not relate to the actual sale of goods or services to a genuine Cardholder; or
  - (k) the transaction is offered, recorded or billed in a currency we have not authorised you to accept; or
  - (l) this Agreement was terminated before the date of the transaction; or
  - (m) You have not complied with Your obligations in clause 3.3; or
  - (n) if applicable, the details are keyed into Equipment and You did not legibly record on a Transaction Receipt the information required by clause 7; or
  - (o) it is a credit transaction in which:
    - (i) the amount of the transaction or transactions on the same occasion is more than any applicable limit notified to You; or
    - (ii) You collected or refinanced an existing debt including, without limitation, the collection of a dishonoured cheque or payment for previous card charges; or
    - (iii) You provide a Cardholder with cash; or
  - (p) it occurs during a period in which Your rights under this Agreement were suspended under or after this Agreement was terminated; or
  - (q) You cannot give a Transaction Receipt as required by clause 7 provided for herein; or
  - (r) for any other reason, the Cardholder is entitled under the Card Scheme Rules to a chargeback of the transaction.
- 8.2 A transaction for a sale or refund is not acceptable if:
- (a) the Cardholder disputes liability for the transaction for any reason or makes a claim for set-off or a counterclaim; or
  - (b) it is of a class which NAB or SmartaPay decide, in their discretion, is not acceptable.
- 8.3 You acknowledge and agree that NAB or SmartaPay may:
- (a) refuse to accept a transaction if it is invalid or unacceptable, or may charge it back to you if it has already been processed, even if we have given you an authorisation; and
  - (b) reverse a sales transaction as a chargeback, and debit your account for the amount of the chargeback, for any of the reasons in clauses 8.1 and 8.2 and any other reason we notify you of from time to time; and
  - (c) without limiting the above, delay, block, freeze or refuse to accept any transaction where NAB or SmartaPay have reasonable grounds to believe that the transaction breaches Australian law or sanctions or the laws or sanctions of any other country.

## **9. Settlement of Transactions**

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- 9.1 NAB will provide settlement on each business day for the gross amount of all funds received from the card schemes in respect of transactions processed under this agreement, less any chargebacks or refunds.
- 9.2 You authorise and direct NAB to pay all amounts due to you under this agreement to SmartaPay, who you have appointed as your agent for the purpose of receiving all settlement funds payable by NAB to you under this agreement.
- 9.3 You acknowledge and agree that:
- (a) payment of the settlement funds by NAB to SmartaPay in accordance with your direction under clause 9.2 will satisfy NAB's obligation to settle to you;
  - (b) SmartaPay is responsible for disbursing any amounts received from NAB to you, in accordance with your funding, reserve and payment arrangements with SmartaPay; and
  - (c) NAB will not be liable for any failure by SmartaPay to account to you for any funds received from NAB.

## **10. Use of Card Scheme Logos and Trade Marks**

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- 10.1 You acknowledge and agree that:
- (a) the card scheme logos, names and holograms ("the Marks") are owned solely and exclusively by the relevant card scheme; and

- (b) you will not contest the ownership of the Marks for any reason; and
- (c) the card schemes may at any time, immediately and without notice, prohibit you from using any of the Marks for any reason; and
- (d) you may only use advertising and promotional material for the cards or which show a card scheme mark in the manner NAB approves, unless you have received authorization from the card schemes through other means.

## **11. Representations and Warranties by You**

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11.1 You represent and warrant that:

- (a) by entering into this Agreement You are not currently and will not be in breach of any Relevant Law or any obligation owed to any Person; and
- (b) where applicable, You are duly authorised to enter into this Agreement and the obligations under this Agreement are valid, binding and enforceable in accordance with its terms; and
- (c) if You are an incorporated body, You validly exist under the laws of Your place of incorporation and have the power and authority to carry on Your business as that business is now being conducted and using any name under which that business is being conducted; and
- (d) if You, a Related Body Corporate or any officer, employee or agent of You or a Related Body Corporate has at any time been listed on a database of terminated merchants maintained by any Card Scheme or have otherwise had merchant services terminated by another acquiring bank, You have disclosed that fact to SmartaPay.

11.2 The representations and warranties set out in this clause will be deemed to be repeated each day after the date You enter into this Agreement.

## **12. No Warranties By Us**

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12.1 Neither SmartaPay nor NAB make any warranties in respect of any of the services provided under this agreement. To the maximum extent permitted by law, any and all implied warranties are excluded. In respect of any warranty which is unable to be excluded under any relevant law, our liability in respect of a breach of that warranty is limited to the re-supply of the services or the payment of the cost of having the services supplied again at our discretion.

## **13. Exclusion of Liability**

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13.1 To the maximum extent permitted by applicable law we are not liable to you or to any person for any act or omission (including negligence) of ours that results in any direct or indirect loss (including loss of profits), damage, injury or inconvenience you suffer because of any service failure, including any unavailability of the service, any delays or any errors. Under no circumstances will we be liable to you for any lost sales, revenue or profit or loss of custom due to any service failure which results in you being unable to promptly accept payments from your customers.

## **14. Termination and Suspension**

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14.1 NAB or SmartaPay may suspend or terminate this Agreement or suspend then terminate this Agreement or any part of it at any time if:

- (a) You are in breach of Your obligations under or arising out of this Agreement; or
- (b) if in SmartaPay's or NAB's reasonable opinion, the processing of Your transactions exposes SmartaPay or NAB to an unacceptable level of risk; or
- (c) You are or have engaged in conduct which exposes SmartaPay or NAB to potential fines or penalties imposed under Relevant Law; or
- (d) Your business or Equipment is or has been targeted by a person engaged in fraudulent or dishonest activity whether with or without Your knowledge; or
- (e) you or any service provider (other than SmartaPay or NAB) that you use in connection with your merchant services has suffered a data breach
- (e) a direction is made under Relevant Law that the Payment Service be suspended or terminated; or
- (f) you have experienced an adverse change in financial circumstances; or
- (g) we have concerns about your solvency or if you come insolvent or are subject to any form of insolvency administration or a resolution is passed or an order is made for winding up; or
- (h) you have a significant adverse credit event recorded against you.

14.2 This Agreement will terminate automatically and immediately if:

- (a) SmartaPay's registration as a member service provider or independent sales organisation with any card scheme is cancelled;
- (b) SmartaPay's agreement with NAB for the provision of merchant services is terminated for any reason; or
- (c) any other agreement that you have with SmartaPay in respect of SmartaPay's payment processing services is terminated for any reason.

14.3 You authorise NAB to disclose to any Card Scheme advice of termination of this Agreement and the reasons for the termination. You acknowledge that the information concerning termination of this Agreement then becomes available to any member of the Card Schemes. This information, available to any member of the Card Schemes, may be used in assessing subsequent applications for merchant facilities.

14.4 This clause 14 survives termination of this Agreement.

## **15. Assignment**

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15.1 You may not assign or charge Your rights under this Agreement without our prior written consent.

**16. Australian Domicile Requirements**

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- 16.1 You acknowledge that we may only provide services to you under this Agreement where you:
- (a) have a permanent establishment in Australia through which transactions are completed;
  - (b) are registered to do business in Australia; and
  - (c) have a local address in Australia for correspondence and acceptance of judicial process, other than a post-office box or mail-forwarding address; and
  - (d) pay taxes in Australia (where required) in relation to the sales activity; and
  - (e) satisfy any other domesticity requirements imposed by card schemes from time to time.
- 16.2 In addition to any other right to terminate or suspend the services, we may immediately cease to accept transactions under this Agreement where you fail to satisfy the above requirements.

**17. Governing Law**

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- 17.1 This agreement is governed by the laws of the State of Victoria. Each party submits to the jurisdiction of the courts of that State of Victoria and any courts of appeal from them.

**18. Amendment**

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- 18.1 We may vary this agreement on 30 days' written notice to you.

**19. Notices**

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- 19.1 You acknowledge that NAB or SmartaPay may deliver notices to You in any of the ways listed in clause 19.2.
- 19.2 A notice must be in writing and is taken to be received:
- (a) if delivered personally, at the time of delivery;
  - (b) if sent by pre-paid post, on the third day after the posting;
  - (c) if sent by facsimile transmission, on the date the transmitting machine records transmission of the complete document;
  - (d) when the party sending the notice is the NAB or SmartaPay, if sent by email, at the time when the email enters Your information system.
- 19.3 The address, facsimile number or email address to be used for notices is the last address, facsimile number or email address advised by a party. You must inform SmartaPay immediately of any change of Your address, facsimile number or email address.

**20. Set-Off**

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- 20.1 SmartaPay and NAB may at any time without notice to you set off any Liability owed by SmartaPay or and NAB (as the case may be), to you on any account against any Liability owed by You to SmartaPay or the NAB (as the case may be) under or in connection with this agreement. For the purpose of this clause, "Liability" means any debt or monetary liability, irrespective of whether the debt or monetary liability is future or present, actual or contingent.