

Terms & Conditions:

1. Definitions

In this agreement:

Account Holder means any person, or **Customer**, who makes payment to *you* on behalf of a **Customer**.

Account Holder's Account means any bank, credit or debit account that facilitates the debiting by the program of fees and other payments payable to *you* on behalf of a **customer**.

Applicable Payments means successful payments made by **customers** to *you* using the **Program** and that attract program **Points**.

Approved Program Material means the materials relating to the promotion of the **Program** including the conditions of use of those materials.

Biller Beneficial Owner is a person who has effective control of the Merchant, owns more than 25% of the Merchant, or is a person on whose behalf a transaction is conducted. For the purposes of this agreement and when the entity is a partnership, sole trader, public company, or association, or when there is no Beneficial Owner, this includes an Authorised Representative who is authorised to sign this contract on behalf of the Merchant and who is in a position to assert significant influence over, or substantively stand behind the actions of, the Merchant.

Bonus Points Cost Rate is the rate on the first page of this agreement and any other rate that the parties may agree to from time to time for **Points** offers. This rate is applicable while *you* are offering **Points** under this Agreement and is applied to the **Payment** amount paid by your **Customer**.

Card (or Account) means the credit, debit or other account nominated or used to make a **Payment** to *you*.

Card Scheme means a central payment network (e.g., Visa, Mastercard or American Express) that uses credit and debit cards to process payments.

Card Scheme Rules means the rules, regulations and standards which regulate participants in a Card Scheme.

Commencement Date means the date of this agreement or such other date as the parties may agree in writing.

Customer means any person or entity with whom *you* engage in a business transaction requiring payment to *you* or any person who utilises the **Program** to make a payment to *you*.

Customer Authorisation Form or **Customer Authorisation** means any form or other authority provided by your **customer**.

GST means any goods and services tax, value added tax or sales tax imposed on the sale or supply of goods, services and rights including but not limited to a tax imposed by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the related imposition Acts of the Commonwealth.

Insolvent in the case of a company, means that a company is or becomes unable to pay its debts when they become due, or is or becomes unable to pay its debts within the meaning of the Corporations Act 2001, or is presumed to be insolvent under that Act, or in the case of an individual, the individual dies, becomes bankrupt or is of unsound mind. **Invoice** means one or more invoices given to *you* by *us* containing such information as we consider necessary to enable *us* to calculate the amount that *you* owe to *us* under this agreement.

Nominated bank accounts means the bank account(s) nominated by *you* in this or your previous agreements for the purpose of receiving **Payments** and for payment of any amounts due by *you*.

Payments in relation to a **Customer**, means any **Payments** made or payable or due to *you* by a **Customer**. For the purpose of this agreement, it also includes any other payments made to *you* and processed by *you*, *us* or another party.

Points means points or similar rewards which *you* fund under this Agreement when a **Customer** makes an **Applicable Payment** using the **Program**.

Privacy Law means all legislation, principles, industry codes and policies regulating the handling of **personal information** including the Privacy Act 1988 (Cth) and the National Privacy Principles contained in schedule 3 to that Act.

Program(s) means the B2Bpay program and/or any variant or similar program or scheme, operated by *us* that provides payments solutions to **Customers**.

Sponsor(s) means any entity that we form an agreement with to jointly operate the **Program** and/or provide additional benefits to **Customers**.

2. Term

This Agreement will commence on the **Commencement Date** and shall continue for 24 months (Initial Term) and thereafter extended for a further 12 months on each anniversary of the **Commencement Date**.

We reserve the right to vary or amend any term of the **Program** or this agreement and any change will be effective and deemed to be accepted from the date nominated in the advice of this change.

3. Responsibilities

3.1 During the term of this agreement, we must;

- include the **Program** as a payment method on your **Customer** invoices and statements and actively promote and encourage the use of the **Program** by all **Customers**;
- handle all enquiries from *you* about the operation of these **Programs**;
- provide efficient payment methods to your **Customers** to facilitate the efficient payment of **Payments** due to *you*;
- receive payments on your behalf;
- transfer funds due to *you* to your **Nominated Bank Account**;
- provide a reconciliation file for consolidated monies deposited in your **Nominated Bank Account**;
- use reasonable efforts to assist **Customers** participating in the **Program** in order to facilitate efficient **Payments**; and
- use reasonable efforts to provide payment failure notifications to **Customers** and *you* participating in the **Program**.

3.2 During the term of this agreement, you must:

- promote your participation in the **Program** and accept **Payments** from the **Program** as payment by **Customers** for goods or services *you* provide;
- not apply any additional fee or penalty to **Customers** as a result of their utilisation of the **Program**;
- make available, strongly promote and actively encourage the use of the **Program** by all **Customers**;
- notify *us* in writing and in advance if *you* wish to change your **Nominated Bank Accounts**;
- when utilising the **Program** portal, agree to the stated terms & conditions;
- ensure that *you* hold **Customer Authorisation** for any **Payments** *you* process;
- only use **Customer Authorisation Forms** that have been provided and/or approved in writing for use by *us* and securely store such authority forms after they have been processed for a period of seven years from the last transaction;
- exercise due care & responsibility with **Payments** processed in the **Program**;
- disclose your participation in the **Program** to any **Customer** or party if *you* are legally or otherwise required to; and
- provide to *us* and authorise usage by *us* of your logo, your business name or similar branding in conjunction with the **Program**.

4. Payments by you

- We will provide *you* with an **Invoice** by email and/or online monthly (or for such other period as notified) for any fees *you* incur using the **Program**. This **Invoice** will be processed no earlier than the 5th day of the month and will be based on **Program** activity from the previous calendar month.
- This **Invoice** will be payable not earlier than the 12th of the calendar month in which the **Invoice** was issued and the amount will be deducted from your **Nominated Bank Account**. If this deduction and any subsequent attempts are unsuccessful, *you* must otherwise pay this **Invoice** within 7 calendar days.
- From time to time *you* and we may agree to additional promotional point offers at additional cost.
- Any **Invoice** disputes raised by *you* will be investigated and if agreed and actioned by *us* can result in **Points** being recalled from your **Customer**.

5. Promotion by you;

You undertake at all times to;

- ensure that any material (in whatever form or format) provided by *you* to *us* does at any time not infringe the intellectual property rights of any person as recognised by law from time to time;
- only use **Approved Program Material** to promote the **Program**;
- strictly comply with the conditions of use in **Approved Program Material** for the **Program**; and
- seek prior written approval for the use of any material that contains **Program** information or offers that is not **Approved Program Material**.
- immediately take action to implement any amendments (to the materials or conditions of use) issued by *us* to **Approved Promotional Material**.

6. Customer Payment Processing

6.1 Agency

You appoint *us* as your agent for the purpose of receiving **Payments** from a **Customer's** or **Account Holder's Account**. This appointment is limited to the performance by *us* of acts necessary to receive these **Payments** from **Customers**. We are not authorised to act on your behalf in any other capacity or to bind *you* in any other way.

6.2 No Collection

You acknowledge and agree that:

- we are not a collection agent;
- we are not responsible for collecting any payments or liable if a **Customer** fails to pay any amounts due to *you*;
- we are not obliged to do anything in addition to stated tasks to recover outstanding **Payments**, participate in or resolve any dispute between *you* and a **Customer** or levy any charges that *you* may wish to impose on a **Customer**;
- this agreement does not alter your relationship with the **Customer** other than by nominating *us* as the recipient of money that is otherwise payable directly to *you* by the **Customer**; and
- this agreement does not oblige *us* to deal with your **Customers** or with **Account Holders** except to the extent necessary to assist in the receiving of **Payments** from them.

6.3 Payment Processing Fee

A payment processing fee, set at our discretion, is payable by your **Customer** to *us* when utilising the **Program**. When the **Customer** pays the payment processing fee, the relevant amount is added to the amount processed and then retained by *us* before funds are dispersed to your **Nominated Bank Account**. Other fees, such as Failed Payment Fees, SMS/Email fees, may also be payable by **Customers** in certain scenarios as communicated to them.

At any stage and should *you* opt to pay any payment processing fee or other fees, the total **Payment** paid by the **Customer** is dispersed to your **Nominated Bank Account** and the payment processing fee will be deducted from your **Nominated Bank Account** monthly and an **Invoice** will be provided to *you*.

6.5 Dispersal of funds to you

We will cause **Payments** received by *us* from a **Customer** or **Account Holder**, less any applicable payment processing fee, to be transferred to your **Nominated Bank Account** within 3 business banking days after the **Payment** was made subject to normal banking and transaction processing operations.

7. Disputed Payments, Chargebacks & Refunds

7.1 Care

You must exercise care and take reasonable precautions to prevent fraudulent, illegal, reversed or disputed **Payments** from occurring.

7.2 Responsibility

As *you* are the beneficiary of funds collected by *us*, the supplier of goods and services to the **Customer** and the party privy to relationships with the **Customer**, *you* bear all responsibility and liability for any reversed or disputed **Payments** or other form of recovery

of funds by us. You indemnify and hold us harmless from and against all claims, costs, liabilities and expenses suffered or incurred by us because of us being obliged, for any reason, to refund or reverse *Payments* before or after the corresponding amount has been remitted to you.

7.3 Notice

We will promptly notify you if a *Payment* is required to be refunded by us, or if we receive notice of a disputed *Payment* that might lead to such refund or disgorgement. You must do everything necessary on your part to enable us to avoid having to refund *Payments*, including, for example, immediately providing information or agreements to us about the goods and services supplied by you and the *Customer Authorisation Forms* in relation to a *Payment*.

7.4 Resolution of Disputes

Notice of a disputed *Payment* or chargeback will be successfully refuted if you provide clear *Customer* contracts, invoices, *Customer Authorisation* that is subsequently accepted by your *Customer's* or the *Account Holder's* financial institution. Should the disputed *Payment* or chargeback not be refuted, you will need to resolve the matter directly with your *Customer* using your standard accounts receivables processes.

7.5 Refund

If we receive notice of a disputed *Payment* and/or are required to refund or reverse all or part of any *Payment* to a *Customer*, an *Account Holder* or their bank or such a refund is debited from our account or otherwise disgorged, then we will be discharged from any obligation to remit that amount to you and/or you must reimburse us for that amount and/or we may off-set amounts due to you under this clause off against any other *Payments* due by us to you and/or deduct amounts from your *Nominated Bank Accounts*.

7.6 Recovery

If you pay money to us in accordance these paragraphs and we subsequently recover funds from the *Customer*, then we will deposit those funds to your *Nominated Bank Account*.

7.7 Licences & Authority

You represent and warrant to us that you hold all statutory licences and authorities necessary for the operation of your entity and the collection of *Payments*. You acknowledge that we are not providing any payment facility in addition to our stated services.

7.8 Beneficial Owner

You as the *Biller Beneficial Owner* understand that we are obliged to undertake necessary identity checks on you and to confirm your beneficial ownership of the Company detailed in section 2. You provide consent for these checks which may involve confirming information using third party databases.

8. Card Scheme & Payment Account Provisions

8.1 Payment Account Acceptance

For all payment accounts, methods, or Cards that we agree with you to make available, you agree to:

- equally accept *Customer* transactions and to not unfairly preference or discourage the use of any payment account, method, or Card;
- have a fair, equitable and reasonable refund policy that is in accordance with industry standards and disclosed to your *Customer* at or before the time of purchase;
- accept payment accounts or Cards subject to the provisions of Card Scheme, processor or acquirer rules, provisions, or industry specific requirements;
- authorise us to submit transactions to, and receive settlement from, Card Schemes, processors, banks, or acquirers on your behalf;
- remove payment account, method or Card identification, logos and decals from your website, systems, and premises upon the termination of this agreement or our provision of that payment account or Card to you;
- not have libellous, defamatory, obscene, pornographic, or profane material, or any instructions on your website that may cause harm to any individuals or to brands associated with the operators of the payment accounts, methods, or Cards;
- confer on Card Schemes the third party right, but not the obligation, to enforce the terms of this agreement as necessary to protect the Card Schemes' brands;
- indemnify Card Schemes against any liability or loss that they may suffer or incur arising from a breach by you of this agreement;
- Card Schemes, their affiliates, agents, successors, or assigns not being, in any event, liable to you for any damages, losses, or costs incurred, including incidental, indirect, speculative, consequential, special, punitive, or exemplary damages of any kind (whether based on contract, tort, including negligence, strict liability, fraud, or otherwise, or statutes, regulations, or any other theory), arising out of or in connection with the agreement; and
- us disclosing transaction and other data about you to Card Schemes, processors, or acquirers to enable us and them to operate and promote services, perform contractual obligations, report and analyse data, and for other lawful purposes.

8.2 Tri-Party Agreement

You acknowledge that due to Card Scheme Rules, where your card volumes exceed, or are reasonably expected to exceed, \$1,000,000 per annum with either Visa or Mastercard:

- you may be required to enter into a Tri-Party agreement, that will be provided to you, between you, the acquirer and us in respect of all card transactions processed by the third-party acquirer that will be mentioned in the Tri-Party agreement; and
- we will be the provider of the services to you.

9. Authority To Credit & Debit:

9.1 Authority

You authorise us to credit and debit your *Nominated Bank Accounts* in accordance with the terms and conditions set out within this agreement.

9.2 Payment Failure

Should the debiting of any amount due by you under this agreement be unsuccessful, we will retry debiting after an additional 5 business days. Should any amount due remain unpaid by this time, we will attempt to contact you and we reserve the right to immediately withdraw our services and/or to off-set any amounts due against any funds due to you.

9.3 Errors

You authorise us to debit your *Nominated Bank Accounts* of any previously credited amount that was subject to banking, system or human error and notified as such to you.

10. Termination

10.1 Termination by us

We may terminate your participation in the *Program* by giving you no less than 30 days' notice in any of the following circumstances:

- the *Program* in no longer exists or is being terminated; or
- we no longer manage or are otherwise involved in the *Program*; or
- a *Sponsor* of the *Program* requires us to not renew your participation or to end your participation in the *Program*; or
- any other means.

10.2 Termination by you

You may terminate this agreement at any time 1 year and 9 months after the *Commencement Date* by giving us 3 months' written notice of your intention to terminate.

10.3 Termination by other means

Either you or we (the non-defaulting party) may terminate this Agreement by giving notice to the other (the defaulting party) in the following circumstances:

- the defaulting party fails to make any payment due under this Agreement when due and that failure continues for a period of 14 days from the date of receipt of a notice requiring the defaulting party to remedy such failure;
- the defaulting party has breached or failed to perform any of its material obligations (other than payment obligations) under this Agreement and where in the opinion of the non-defaulting party that breach or failure is capable of remedy, it continues for a period of 14 days from the date of receipt of a notice requiring the defaulting party to remedy such breach or failure; or
- the defaulting party becomes *Insolvent*.

10.4 Liability for termination

- Termination of your participation in the *Program* does not cancel your obligations to pay *Program Invoices* or other amounts due.
- Termination of this Agreement under clause 9.1 or clause 9.2 will be without liability for either party in respect of the relevant event, but will not affect a party's rights in relation to any prior unrelated breach of this Agreement.
- Termination of this Agreement under clause 9.1 or clause 9.2 will be without liability for either party in respect of the relevant event, but will not affect a party's rights in relation to any prior unrelated breach of this Agreement.
- On termination of this Agreement or the termination of your participation in the *Program*, you must cease to represent yourself as a participant in the relevant *Program* and return to us any relevant *Approved Program Material* in your possession or control

10.5 Change of Ownership

You must notify us of any material change of ownership that occurs or is set to occur during the term of this Agreement. You must also facilitate transfer of this Agreement to the new owners.

11. General

11.1 Governing law

New South Wales and you and we submit to the non-exclusive jurisdiction of the courts in that place.

11.2 Notices

A notice or other communication given in connection with this Agreement must be in writing and sent by post or email to the party's nomination contact in connection with the operation of this *Program*.

11.3 No set-off

You may not withhold and set-off the payment of any amount due against any amount due and owing by us.

11.4 Entire agreement

This Agreement supersedes all previous Agreements in respect of its subject matter and embodies the entire Agreement between the parties.

11.5 Changes

Except where expressly provided for in this Agreement, a provision of this Agreement may not be changed except in writing and signed by you and us.

11.6 No Partnership

Nothing in this Agreement creates any relationship of partnership or joint venture between you and us.

11.7 Taxes

- Taxes and other charges will be paid by the party liable for the tax or charge in accordance with applicable laws.
- You acknowledge and agree that we shall not be responsible and shall not have any liability for any income tax or other tax obligation on you, the *Account Holder* or any other party arising from the *Program*.
- Unless expressly stated otherwise, the consideration payable under this Agreement has been calculated exclusive of GST or similar tax or any other tax, fee, levy, charge, excise (including a US excise tax) and other impost of whatever kind which is or may be imposed on the consideration or the supply of services provided under this Agreement. You shall be responsible for and must pay or reimburse us upon demand, or provide to us evidence of exemption from, all such tax, fee, levy, charge, excise and other impost.
- If GST is imposed on a supply made pursuant to this Agreement, you must pay us, in addition to the consideration, an amount equal to the GST payable by us in respect of the supply (without any deduction or set-off). Any amount payable under this clause is payable on the day that payment of the consideration (or part of the consideration) for the supply that has given rise to the obligation to pay GST, is required pursuant to this Agreement or where the consideration is non-monetary consideration, seven days after you receive a tax invoice for the supply.
- Each party will use its reasonable efforts to issue a tax invoice as required by the relevant GST legislation, and to do anything else which may be required to

enable or assist the other party to claim or verify any tax credit, set off, rebate or refund in respect of any GST paid or payable in connection with supplies under this Agreement.

11.8 Indemnities & Liabilities:

- (a) The indemnities in this Agreement are continuing obligations, independent from the other obligations and continue after this Agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Agreement.
- (b) You indemnify us against any loss arising from or related to:
 - (i) any breach of laws by you or your personnel;
 - (ii) any breach by you of this Agreement; and
 - (iii) any claim by any third party, except to the extent the claim arises as a result of our negligence or breach of this Agreement.
- (c) Neither party is liable for any failure to perform or delay in performing its obligations under this Agreement if that failure or delay is due to a Force Majeure Event and that party has done all things reasonably necessary to remove or remedy the effect of the Force Majeure Event. If the failure or delay exceeds 60 days, then either party may terminate this Agreement with immediate effect by giving at least 14 days' written notice to the other party. If the failure or delay ceases during such notice period, the right to terminate also ceases. This clause does not apply to any obligation to pay money.

11.9 Assignment

You may not assign or otherwise deal with your rights and obligations under this Agreement with our prior written consent.

11.10 Privacy

You agree to comply with all *Privacy Laws* which are binding on you or which we are bound to comply with and which are notified to you.