



Paypa Plane

## SAMPLE SPONSORED MERCHANT AGREEMENT

### PARTIES

BETWEEN **AXIS IP PTY LTD Trading as 'Paypa Plane'** (ACN 613 002 430) of 400 Queen St Brisbane (**Provider**).

AND **The Merchant identified in Item 2 of the Schedule (Sponsored Merchant)**.

AND **Macquarie Bank Limited** (ABN 46 008 583 542), of 1 Shelley Street, Sydney, New South Wales, 2000 (**Macquarie**)

### SCHEDULE

Item 1	Date of Agreement	
Item 2	Sponsored Merchant (contracting entity)	
Item 3	Sponsored Merchant Contact Name	
Item 4	Sponsored Merchant Business Name	
Item 5	Sponsored Merchant Postal Address	
Item 6	Sponsored Merchant Principal Place of Business	
Item 7	Sponsored Merchant Email Address	
Item 8	Sponsored Merchant URL	
Item 9	Term	12 months commencing on the date of this Agreement ( <b>Effective Date</b> ) renewing each month thereafter until terminated in accordance with Clause 5.
Item 10	Services	<p>The Provider will:</p> <ul style="list-style-type: none"> <li>• on-supply Sponsored Payment Services to the Sponsored Merchant;</li> <li>• provide a brochure to be supplied to Clients;</li> <li>• provide the Sponsored Merchant and Clients with access to the System (including all features available within the System from time to time) as detailed in the 'Fee Schedule Brochure' supplied to the customer);</li> <li>• upon receiving each new request from the Sponsored Merchant, generate a payment request to each Client;</li> <li>• process Transactions in accordance with the terms of this Agreement, the Direct Debit Request and the Fees.</li> </ul>
Item 11	Service Fee	The Fees (as defined below) will be paid to the Provider in accordance with the terms of this Agreement.
Item 12	Special Conditions	N/A

**To be completed by the Provider:**

<b>Item 13</b>	<b>Item 14 Sponsored Merchant Billing Descriptor</b>	
<b>Item 15</b>	<b>Item 16 Sponsored Merchant – Merchant Category Code</b>	

## TERMS OF AGREEMENT

### RECITALS

- A. The Provider provides the Services set out in Item 10 of the Schedule.
- B. The Sponsored Merchant wishes to engage the Provider to provide the Services to the Sponsored Merchant on the terms and conditions of this Agreement.
- C. Macquarie agrees to provide the Provider with the Sponsored Payment Services for provision to the Sponsored Merchant on the terms of this Agreement.

### 1. DEFINITIONS

1.1 In this Agreement:

- a) **"ACL"** means the Australian Consumer Law at Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- b) **"Agreement"** means this agreement and any schedule, variation or annexure to it;
- c) **"Authentication"** means the process whereby the identity of a cardholder is authenticated using the Authentication Procedures. "Authenticate", "authenticated" and "authenticating" have similar meanings.
- d) **"Authentication Procedures"** means the procedures identified by Macquarie as being those to be followed when authenticating the identity of a cardholder who wishes to use their nominated card to purchase goods or services from the Sponsored Merchant using the Services supplied by the Provider.
- e) **"Authentication Request"** means a request to authenticate a proposed sales transaction using the Authentication Procedures.
- f) **"Authorisation"** means, in respect of a transaction, confirmation by Macquarie that at the time at which Authorisation is given, the card number exists and is valid, there are sufficient funds available in the account being accessed to cover that transaction and that the card has not been reported stolen or lost at the time of the sales transaction.
- g) **"Chargeback"** means the reversal of a sales transaction to the Sponsored Merchant or the Provider which results in a debit or a reversal of Fees (i.e. a transaction returned by Macquarie or the relevant card issuer in accordance with the applicable Card Scheme Rules or other applicable rules governing the transaction).
- h) **"Client(s)"** mean the customers of the Sponsored Merchant from time to time.
- i) **"Confidential Information"** means:
  - (i) all business and financial information, sales and supply details, marketing strategies, Client and supplier listings, business listings, personal and sensitive information of both parties clients, and information concerning both parties businesses or their Clients, relating to both parties or their related entities;
  - (ii) all procedures, computer programs and electronic files, specifications, manuals, notes, diagrams, flow charts, algorithms, routines, drawings, sketches, applications, calculations, know how or any other verbal information or written data concerning the parties and the conduct of their businesses;
  - (iii) all inventions, formulations, manufacturing processes, improvements, modifications, discoveries, concepts,

ideas and all (if any) other information relating to both parties or their businesses;

- (iv) any other information which, by its nature, places or potentially places both parties or their related entities at an advantage over their present or future business competitors; and

- (v) any other information that would otherwise at law be considered secret or confidential information of both parties or their related entities;

whether or not marked "Confidential" but does not include information which:

- (vi) at the time of first disclosure by one party to the other is already in the public domain;

- (vii) after disclosure to one party by the other, becomes part of the public domain otherwise than by disclosure in breach of the terms of this Agreement; and

- (viii) either party can prove was in their possession at the time of first disclosure by the other party and was not acquired directly or indirectly from the other party;

- j) **"Data Security Standards"** means the data security standards mandated by the Card Schemes for the protection of cardholder details and transaction information (including the Payment Card Industry Data Security Standards ('PCI-DSS' and the Payment Application Data Security Standard ('PA-DSS')), issued by the Payment Card Industry Security Standards Council, as amended from time to time), and any additional standards of which Macquarie or the Provider advises from time to time.

PCI-DSS provides a set of comprehensive requirements for enhancing payment account data security and forms industry best practice for any entity that stores, processes and/or transmits cardholder data. PCI-DSS requirements apply to all merchants that store, process or transmit cardholder data, and apply to all system components included in, or connected to, the cardholder data environment. PCI-DSS sets forth 12 high-level standards to ensure that payment businesses maintain the confidentiality and integrity of sensitive account and transaction data. The standards cover the entire transaction cycle, focusing on key areas such as access control, authentication, firewalls, virus protection, patch management, data disposal, encryption and physical security.

- k) **"Direct Debit Request"** means the Direct Debit Request form provided to and signed by Clients authorising the Provider to provide the Services.

- l) **"Failed Authentication Transaction"** means a transaction which could not be authenticated using the Authentication Procedures because the cardholder used an incorrect Personal Identifier or the transaction was denied by the relevant card issuer or the Card Scheme's computer systems.

- m) **"Fees"** means the fees charged by the Provider for providing the Services in accordance with the Paypa Plane Fees Definition available in the 'Fee Brochure' provided to the Sponsored Merchant including but not limited to the following fees:

- (i) transaction fees;
- (ii) scheduled payment day change fee;
- (iii) declined payment fee;
- (iv) client missed payment fee (after grace period expiry);

- (v) chargeback fee; and
- (vi) text message costs.
- n) **"GST"** means any tax imposed on the supply of goods or services, consumption or value added tax, including without limitation any tax imposed in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;
- o) **"Incomplete Authentication Transaction"** means a card transaction which the Sponsored Merchant or the Provider have tried to authenticate using the Authentication Procedures, but were unable to do so because at the time the Sponsored Merchant tried:
  - (i) the Card Scheme's computer systems, the Sponsored Merchant's computer systems, Macquarie's computer systems, the Provider's computer systems or a combination of any of them was unavailable; or
  - (ii) the card issuer was registered with the Card Schemes to participate in the Authentication Procedures but:
    - A. the computer system of the card issuer was unavailable; or
    - B. the card issuer provided an invalid response or no response to an Authentication Request.
- p) **"Intellectual Property"** means all copyright, patents, trade marks, designs, names, formulae, drawings, computer software, specifications, product data, Confidential Information and all modifications, improvements and enhancements (whether registrable or not) owned by the Provider or its related companies or created or arising from the performance of the Sponsored Merchant's duties pursuant to this Agreement;
- q) **"Merchant Software"** means the software which Macquarie, a Card Scheme or the Provider has told the Sponsored Merchant is required if it wishes to participate in the Authentication Procedures.
- r) **"Non-Authenticated Transaction"** means a card transaction that has not been authenticated because the Sponsored Merchant did not seek Authentication using the Authentication Procedures.
- s) **"Personal Identifier"** means the information provided by a cardholder to the issuer of the relevant card which enables the issuer to identify the cardholder remotely.
- t) **"Privacy Laws"** means all legislation and principles and industry codes or policies, relating to the collection, use, disclosure, storage and granting of access rights to Personal Information (as that term is used in the *Privacy Act 1988 (Cth)*) as well as data protection, surveillance, security, direct marketing and other related matters (as amended and varied from time to time) and includes the *Privacy Act 1988 (Cth)*.
- u) **"Sponsored Payment Services"** means:
  - (i) the Merchant Services, as described in the Macquarie Merchant Services Terms;
  - (ii) direct debit services; and
  - (iii) any other payment services that Macquarie may agree to provide to the Provider from time to time.
- v) **"System"** means the Paypa Plane software accessible online and through mobile devices that requests, collects, tracks and reports on all payments from Clients in accordance with each Direct Debit Request or one-off payments collected from time to time.
- w) **"Transaction(s)"** means each direct debit payments or other one-off payment authorised by the Client, including but not limited to delayed, missed, customised or amended

direct debit payments, to be paid by the Client to the Sponsored Merchant in accordance with the Direct Debit Request.

## 2. INTERPRETATION

- 2.1 In this Agreement, the following rules apply unless the context requires otherwise:
- a) headings are for convenience only and do not affect the interpretation of this Agreement;
  - b) the singular includes the plural and the plural includes the singular;
  - c) any gender includes any other gender;
  - d) reference to a person includes a natural person, corporation, partnership, association or other legal entity;
  - e) reference to legislation includes that legislation as amended or modified or re-enacted;
  - f) reference to a provision, clause, Schedule or Annexure means, respectively, a provision, clause, Schedule or Annexure of this Agreement.

## PART A (ACQUIRER TERMS)

The Sponsored Merchant must comply with this Sponsored Merchant Agreement. If the Sponsored Merchant does not, then it must not proceed to use the Services.

## 3. ACQUIRER TERMS

- 3.1 The Sponsored Merchant acknowledges that it will have the ability to receive payments from its Clients which are funded through credit or debit card facilities. In certain circumstances, the operators of those card schemes (for example, Visa International and MasterCard International and/or their affiliates) (**Card Schemes**) may require that the Sponsored Merchant enters into a direct contractual relationship with the bank that acquires those transactions and which is a member of the schemes administered by those Card Schemes. The terms set out in this Part A (Acquirer Terms) are entered into pursuant to such requirements and create a tripartite contractual relationship between the Sponsored Merchant, the Provider and Macquarie.
- 3.2 While these Acquirer Terms establish a direct contractual relationship between the Sponsored Merchant and Macquarie, the Sponsored Merchant acknowledges that they do not make Macquarie responsible for the Services or any related services, which are supplied to the Sponsored Merchant directly by the Provider and are governed by Part B (Facilitator Terms).

## 4. COMMENCEMENT & TERM

- 4.1 By supplying this Agreement Macquarie (through the Provider or otherwise) or submitting a transaction request to the Provider, the Sponsored Merchant is deemed to have read, understood and accept the terms of this Agreement and is making a standing offer to Macquarie to enter into it and comply fully with its terms. The Sponsored Merchant Agreement:
- a) commences on (the earlier of) the Effective Date or when the Sponsored Merchant supplies this Agreement to Macquarie (through the Provider or otherwise) or submits a transaction request to the Provider, provided that Macquarie's obligations do not

commence until it has notified the Provider that it has accepted this Agreement; and

- b) remains in effect for as long as the Sponsored Merchant continues to use the payment services, unless earlier terminated in accordance with clause 5 below.

4.2 Without limiting the above, the Sponsored Merchant acknowledges that Macquarie has no obligation to accept the Sponsored Merchant's standing offer as contemplated in paragraph 4.1a), on-board the Sponsored Merchant or (until Macquarie has accepted the terms of this Agreement and completed its on-boarding process) settle any funds in respect of transactions submitted by the Sponsored Merchant.

## 5. ENDING THESE TERMS

5.1 This Agreement will continue for the Term specified in Item 9 of the Schedule, unless terminated earlier in accordance with this Agreement.

5.2 Macquarie may terminate the Agreement:

- a) if the Sponsored Merchant breaches, or fails to comply with, any term of this Agreement; and
- b) for convenience, at any time on written notice to the Sponsored Merchant (and, where it do so, it will use reasonable endeavours to give the Sponsored Merchant prior notice, although the Sponsored Merchant acknowledges this will not always be reasonably possible or practicable.)

5.3 The Sponsored Merchant may terminate this Agreement by providing the Provider with 30 days' prior written notice of such termination.

5.4 If this Agreement is terminated, the Sponsored Merchant must immediately cease using the Services from the effective time of such termination.

5.5 The Sponsored Merchant acknowledges that the terms contained within this Part A will survive and continue to apply to the Sponsored Merchant notwithstanding such termination. This will not prevent the Sponsored Merchant from receiving Services through the Provider through separate arrangements made by the Sponsored Merchant with another member of the schemes administered by the Card Schemes.

## 6. COMMITMENTS OF THE SPONSORED MERCHANT

6.1 The Sponsored Merchant must ensure that, and it is an essential term of this Agreement that, it complies in all respects with all requirements, obligations, limitations, restrictions and conditions in any rules and requirements issued from time to time by the Card Schemes that regulate participants in the respective Card Schemes (**Scheme Rules**) in so far as they relate to the Sponsored Merchant's use of the Services it receive from the Provider to accept payments from the Sponsored Merchant's Clients. It is the Sponsored Merchant's obligation to familiarise itself with any Scheme Rules, including as may be updated, amended or varied during the period in which the Sponsored Merchant uses the payment services.

6.2 The Sponsored Merchant acknowledges that any representations, undertakings and warranties it makes to the Provider under this Agreement are also made to and for the benefit of Macquarie. In addition to those

representations and warranties, the Sponsored Merchant warrants to Macquarie and the Provider that:

- a) it has the necessary power, capacity and authority to enter into this Agreement and perform its obligations under it;
- b) it proposes to use, and will use, the Services for its own benefit only and will not resell, re-licence, re-purpose or otherwise extend the benefit or enjoyment of the Services to any other person or entity (whether disclosed to Macquarie or not);
- c) all information supplied by it to Macquarie or the Provider in, and in support of, the Sponsor's Merchants application to use the Services (including information about its business, business details, activities, products, services and/or other affairs) is true, accurate and current and not misleading (including by omission);
- d) it will only use the Services for the purposes contemplated in this Agreement and its use of the Services will at all times comply with that Agreement and all applicable laws, regulations, guidelines or standards; and
- e) it will not use the Services for any unlawful, illegal, fraudulent, misleading, deceptive or criminal purpose or activity.

6.3 The Sponsored Merchant must not use the Services supplied to it under the this Agreement in any jurisdiction outside Australia.

## 7. MACQUARIE'S LIABILITY

7.1 To the maximum extent permitted by applicable law, the Sponsored Merchant acknowledges that any Services supplied to it (including the Services supplied under this Agreement) are supplied on an 'as is' basis. Macquarie expressly excludes all representations or warranties, conditions or guarantees, express or implied, in fact or at law, with respect to such Services or the subject matter of this Agreement, including in relation to title, merchantability, fitness for purpose and non-infringement. Where such terms are statutorily implied and cannot be excluded, Macquarie's liability is limited to the fullest legally permissible extent.

7.2 Macquarie will not be liable to the Sponsored Merchant or any third party for any consequential, incidental, indirect, special, punitive or exemplary damages, or for damages related to loss of profits, opportunity, revenue, goodwill, anticipated savings, inconvenience or any losses of a type referred to in 7.3.

7.3 Without limiting the generality of Clause 7.2, to the maximum extent permitted by applicable law, Macquarie will not be liable for:

- a) any failure, breakdown or interruption caused by any third party processing, communications and other systems or services on which the payment services are dependent;
- b) any loss of data, personalised settings or other interruptions to the payment services, due to technical or other difficulties;
- c) any unauthorised use of the payment services by the Sponsored Merchant or any viruses, trojans or other harmful code; or
- d) any loss or damage the Sponsored Merchant may suffer resulting from any failure to credit the

Provider's bank accounts or any other account, due to technical or administrative difficulties related to the banking system used for the transfer of funds, and in no circumstances will Macquarie have any liability to the Sponsored Merchant in relation to the Services, or the Provider's performance or non-performance of any of its obligations to the Sponsored Merchant under this Agreement.

- 7.4 Subject to any clause to the contrary (including any losses specifically excluded), to the maximum extent permitted by applicable law, Macquarie excludes all liability to the Sponsored Merchant in connection with this Agreement. Where, for any reason, such liability cannot be excluded, then Macquarie's maximum aggregate liability to the Sponsored Merchant in connection with this Agreement or its subject matter will not exceed the amount of \$500.
- 7.5 The limitations and exclusion of liability in this clause 7 apply regardless of the basis on which such liability arises, whether in contract, tort (including negligence), under statute, indemnity or otherwise) or under any other theory of liability. They also apply whether or not the relevant loss or damage was foreseeable and whether or not Macquarie had been advised of the possibility of the loss or damage.

## **8. DISPUTES**

- 8.1 The Sponsored Merchant acknowledges that, in lieu of any court proceedings, arbitration or other formal claim, it must first direct any complaints or disputes in connection with the Services or any products or services supplied to it by the Provider to the Provider and not to Macquarie, and use all reasonable efforts to resolve that complaint or dispute by good faith discussion. This includes complaints or disputes initiated by a Client. The Sponsored Merchant's point of contact for these purposes is Simone Joyce at

[sjoyce@paypaplane.com](mailto:sjoyce@paypaplane.com)  
1300 546 139

- 8.3 Macquarie may settle, directly with the Provider, payment transactions processed through the Services the Provider supplies to the Sponsored Merchant. However, the Sponsored Merchant expressly acknowledges that the Provider, and not Macquarie, is responsible for the settlement of funds with the Sponsored Merchant. If the Sponsored Merchant has acquirer-specific questions or issues, it may contact Macquarie in its capacity as acquirer of the payment transactions it submits through the Provider using the contact details set out below.

**02 8232 3333**

<https://www.macquarie.com/au/about/contact>

- 8.4 Nothing contained in this clause 8 will prevent a party from seeking injunctive relief in an appropriate court, where failure to obtain such relief would cause irreparable damage to the party concerned.

Services for the Term on the terms and conditions of this Agreement.

- 9.2 The Sponsored Merchant acknowledges that it has read and understands the Fees and it understands the functionality of the System.
- 9.3 In order to receive the Services, the Sponsored Merchant hereby consents to the Provider disclosing its details (as listed in the Schedule) to Macquarie.
- 9.4 The Provider retains the right to enter into any contract with any other person to provide services similar to those contemplated by this Agreement at its sole discretion.
- 9.5 The Sponsored Merchant must not receive similar services to those contemplated by this Agreement from any other person or entity.
- 9.6 The Sponsored Merchant and the Provider may agree for the Provider to vary the Services or provide additional services from time to time. Any varied or additional services will be provided on the terms and conditions of this Agreement, and such other additional terms as may be agreed between the parties.
- 9.7 The Sponsored Merchant must use its best endeavours to plan and notify the Provider of any upcoming variations, additions or changes to the Services to enable the Provider to plan and arrange the resources necessary for the provision of the Services.
- 9.8 The Provider may perform its obligations under this Agreement by supplying employees, agents or sub-contractors to do so on its behalf and in its name.
- 9.9 The Sponsored Merchant agrees and acknowledges that it is solely responsible for all goods and services offered to its Clients.

## **10. SERVICE FEE**

- 10.1 In return for the Provider providing the Services to the Sponsored Merchant, the Sponsored Merchant agrees to pay the Provider the Service Fee at the times and in the manner required by the Provider.
- 10.2 The Sponsored Merchant hereby agrees and irrevocably authorises the Provider to automatically deduct its Service Fees, and any other amounts payable by the Sponsored Merchant under this Agreement, from the funds collected by the Provider from Clients without further notice to the Sponsored Merchant.
- 10.3 In the event that the Provider's Service Fees exceed the amount collected by the Provider, the Sponsored Merchant hereby agrees and irrevocably authorises the Provider to take the Service Fees from the credit card provided to the Provider by the Sponsored Merchant for the purpose of paying its Service Fee without further notice to the Sponsored Merchant.
- 10.4 The Provider will provide the Sponsored Merchant with a monthly tax invoice for the Services provided and the Service Fees paid to the Provider for the relevant invoiced period.
- 10.5 The Service Fee is exclusive of GST. In addition to payment of the Service Fee, the Sponsored Merchant must also pay

## **PART B (FACILITATOR TERMS)**

### **9. PROVISION OF SERVICES**

- 9.1 The Sponsored Merchant engages the Provider to perform the Services and the Provider agrees to perform the

any GST required to be paid or accounted for in relation to the receipt of the Services.

- 10.6 The Provider reserves the rights to update and amend its Fees at its sole discretion from time to time upon notice to the Sponsored Merchant.

## **11. SERVICE PROVIDER'S OBLIGATIONS**

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11.1 During the Term, the Provider will:

- a) use reasonable endeavours to provide the Services to the Sponsored Merchant with due care;
- b) comply with all laws and regulations pertaining to its business of providing the Services and hold and maintain any permit, licence or qualification required to provide the Services;
- c) use reasonable endeavours to ensure that it and its employees, agents and sub-contractors have the qualifications, experience and expertise appropriate to provide the Services required under this Agreement;
- d) pay to its employees, agents and sub-contractors all their legal entitlements with respect to salary/wages, superannuation contributions, annual leave, public holidays and other employment or contractual entitlements as required by law; and
- e) comply with any additional obligations specified in Item 10 of the Schedule in relation to the provision of the Services.

## **12. SPONSORED MERCHANT'S OBLIGATIONS**

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12.1 During the Term, the Sponsored Merchant must:

- a) on an ongoing basis, provide the Provider with its legal entity name, any 'trading name' or 'doing business as' name, its business address and a complete description of all goods and services it sells;
- b) comply with all applicable requirements under the Scheme Rules and all applicable laws, regulations, guidelines or standards, as may be amended from time to time;
- c) not knowingly submit any transaction that is illegal or that the Sponsored Merchant should have known was illegal;
- d) immediately report to the Provider:
  - a. any problem with the provision of the Services which is discovered by the Sponsored Merchant or brought to its attention by its Clients or any third parties;
  - b. if it suspects or has reasonable knowledge of a potential data breach, as defined by the Privacy Laws;
- e) notify the Provider of any changes to the Sponsored Merchant's services or fees;
- f) act in accordance with all reasonable directions given by the Provider from time to time;
- g) agree and acknowledge that it is solely responsible for all goods and services offered by the Sponsored Merchant to its Clients and for satisfying itself as to

the commercial viability of any Transaction and the Clients;

- h) maintain adequate public liability insurance in respect of the Sponsored Merchant's Business;
- i) conduct the Sponsored Merchant's Business with due care and in a proper and business-like manner; whilst conducting its business, not do any act or thing that is prejudicial to the reputation, best interests or goodwill of the Provider;
- j) ensure that it and its employees, agents and sub-contractors have the qualifications, experience and expertise necessary to conduct the Sponsored Merchant's Business and comply with this Agreement;
- k) report to the Provider as required by the Provider from time to time; and
- l) pay to its employees, agents and sub-contractors all their legal entitlements with respect to salary/wages, superannuation contributions, annual leave, public holidays and other employment or contractual entitlements.

## **13. REQUIRED CONDUCT**

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13.1 The Sponsored Merchant must not change:

- a) its ownership or control in any way;
- b) its principal business activities or fundamental line of business as approved pursuant to this Application (including in a manner that would prevent it from operating under an alternative 'Merchant Category Code' to the relevant code as approved pursuant to this Agreement; or
- c) the types of goods or services that it supplies to its Clients,

without first notifying the Provider and Macquarie in writing of that change and (in the case of paragraphs 13.2b) and 13.2c) receiving written consent from both the Provider and Macquarie to do so.

13.2 The Sponsored Merchant must not:

- a) carry on business in a place which has not been approved by Macquarie (such approval not to be unreasonably withheld);
- b) process transactions on behalf of a third party. For clarity, this prohibition includes processing payments for goods or services sold on another person's website;
- c) change its business name without Macquarie's consent (such consent not to be unreasonably withheld or delayed); and
- d) transfer or attempt to transfer its financial liability in respect of the Services by asking or requiring its Clients to waive their dispute rights.

13.3 The Sponsored Merchant will allow the employees and representatives of the Provider, Macquarie or any Card Scheme, reasonable access to its premises during normal business hours to check compliance with this Agreement

and/or the relevant Scheme Rules, including by providing access to:

- a) details relating to the payment services it receives, and the 'Merchant Category Code' under which it operates;
- b) copies of this Agreement (as executed) and other documents or forms retained in respect of its activities under this Agreement; and
- c) documents and other information relation to transactions.

#### **14. COLLECTION AND PAYMENT OF CLIENT FEES**

- 14.1 The Provider will collect Fees as authorised by each Direct Debit Request and in accordance with the terms of this Agreement.
- 14.2 The Sponsored Merchant irrevocably authorises the Provider to identify the Sponsored Merchant's name/code including all or part of its Business on Client's bank account or card account statements for any of the Services.
- 14.3 The Sponsored Merchant acknowledges and agrees that the Direct Debit Requests provided by Clients are Confidential and personal to the Provider and no other person has the right, permission or authority to conduct debit transactions from Clients in reliance on that information.
- 14.4 Funds collected will be held in trust for the Sponsored Merchant's clients until such funds are considered 'cleared funds' (**Cleared Funds**) in accordance with the regulations and procedures of the Australian Payments Network Limited.
- 14.5 Once cleared, the Cleared Funds will be immediately transferred to the Sponsored Merchant's nominated account.
- 14.6 The Provider may credit the Client's nominated account if required in accordance with each Direct Debit Request.
- 14.7 The Provider reserves the right to withhold the Cleared Funds if required (including by law) from time to time for a period of up to six months.

#### **15. INVALID OR UNACCEPTABLE TRANSACTIONS**

- 15.1 The Sponsored Merchant acknowledges that a transaction for a sale or refund is invalid or unacceptable if (without limitation):
  - a) the transaction is illegal or otherwise prohibited by applicable laws, regulations, guidelines or standards (including Scheme Rules);
  - b) the transaction is fraudulent (whether the Provider had knowledge of this fact or not);
  - c) the transaction is not authorised by its Client;
  - d) the price charged for the goods or services is more than the listed price for those goods or services;
  - e) another person has provided or is to provide the goods or services, the subject of the transaction to a Client or the Provider arranged for another person to process the transaction;
  - f) it did not actually supply the goods or services to a genuine Client as required by the terms of the

transaction, or has indicated its intention not to do so;

- g) the transaction did not relate to the actual sale of goods or services to a genuine Client;
- h) the transaction is offered, recorded or billed in a currency other than Australian dollars;
- i) the goods or services were supplied outside Australia;
- j) it did not legibly record on a transaction receipt information required to be recorded by Macquarie;
- k) this Agreement was terminated before the date of the transaction;
- l) it occurs during a period in which the Sponsored Merchant's rights under this Agreement were suspended or after this Agreement was terminated;
- m) it cannot furnish a transaction receipt; or
- n) the Client disputes liability for the transaction for any reason or makes a claim for set-off or a counterclaim; or
- o) the transaction, in Macquarie's reasonable discretion, is invalid.

#### **16. CLIENT TRANSACTION DISPUTES & DISHONOURS**

- 16.1 Unless otherwise specifically agreed or as required by law, the Provider is under no obligation to transfer funds to a Client as a refund.
- 16.2 The parties acknowledge that the number of times the Provider will reprocess a failed direct debit will be as agreed between the parties from time to time and in accordance with the Fees.
- 16.3 In the event that a Client raises a dispute or a direct debit is dishonoured the Sponsored Merchant agrees and acknowledges that it is the Sponsored Merchant's sole responsibility to manage and deal with the dispute.

#### **17. CHARGEBACKS**

- 17.1 The Sponsored Merchant acknowledges that the Provider or Macquarie may:
  - a) refuse to accept a transaction if it is invalid or unacceptable;
  - b) process a Chargeback to the Sponsored Merchant or the Provider if a Chargeback request is submitted by a Client;
  - c) to the extent it is able to do so, reverse a transaction processed by the Sponsored Merchant, even if it has been given an Authorisation (either electronically or by telephone); and
  - d) reverse a sales transaction where it considers that a Chargeback is likely to be submitted for that transaction or for any other reason in its reasonable discretion.

#### **18. TRANSACTION RECEIPTS**

- 18.1 The Sponsored Merchant must ensure that a transaction receipt is prepared for each transaction in accordance with

the Scheme Rules. The information contained on the transaction receipt must legibly include:

- a) the date and time of the transaction;
- b) the amount of the transaction and any tip;
- c) a description of any goods or services sold sufficient to identify them;
- d) an indication of the relevant card scheme;
- e) the currency symbol if it is in a foreign currency (where the Provider and Macquarie have approved foreign currency processing);
- f) details of card number (a truncated version of the card number), card Issuer, Client (if possible);
- g) card validity dates;
- h) the transaction Authorisation number (if any);
- i) the Sponsored Merchant's information, including at a minimum:
  - A. its name as most recognisable to the Client;
  - B. contact information for service enquiries;
  - C. the terms and conditions of sale, if restricted;
  - D. the exact date free trial ends, if offered;
  - E. any cancellation policy; and
  - F. its web site address.

18.2 The Sponsored Merchant must give its Client a copy of the transaction receipt, containing all information on the original transaction receipt, as soon as possible after one is requested by that Client.

18.3 For at least 18 months after a transaction, the Sponsored Merchant must retain the transaction receipt and any document that is evidence of the Client presenting a card for use in a transaction (in accordance with all relevant privacy laws and related standards).

18.4 The Sponsored Merchant must provide the Provider with the transaction receipt and any other required evidence of the transaction within 10 business days if the Provider requests it. If the Sponsored Merchant fails to do so, it acknowledges a sales transaction may be charged back if the amount cannot be collected from the Client, in addition to reasonable administration fees.

## 19. DATA SECURITY STANDARDS

19.1 The Sponsored Merchant must comply with the Data Security Standards and PCI-DSS requirements, and successfully complete the protocols for the Data Security Standards within a reasonable time frame stipulated by Macquarie or the Card Schemes.

19.2 The Sponsored Merchant must ensure appropriate security measures are in place to achieve and maintain at least Payment Card Industry (PCI) certification as it relates to the provision of goods or services by the Sponsored Merchant, and the transmission of all transaction information.

19.3 The Sponsored Merchant acknowledges and agrees that Macquarie and/or any of its suppliers or representatives may be required by any laws, regulations, guidelines or standards or a regulator to intercept communications over the networks used to process transactions and/or monitor its usage of such networks and communications sent over them.

## 20. DUTIES TO CLIENTS

20.1 Without limiting the Sponsored Merchant's obligations to comply with the Scheme Rules, the Sponsored Merchant must:

- a) disclose to a Client any fee it may charge them for their use of the payment services it provides before

the relevant card transaction is completed, and the Sponsored Merchant must do it in such a way that allows a Client to cancel the transaction if they choose to do so, without them incurring any cost;

- b) accept any valid and acceptable card in a transaction (but must not accept a card for the purpose of giving a Client cash);
- c) perform all obligations (including supplying all goods and/or services) to the Client in connection with a sale before informing the Provider or Macquarie about the sales transaction (except in the case of future dated payment transactions);
- d) not sell, purchase, provide or exchange any information or document relating to a Client's account number, or card number, or a transaction, to any person other than:
  - A. Macquarie or the Provider;
  - B. the agents the Sponsored Merchant uses in its business for an approved purpose;
  - C. the card issuer; or
  - D. as required by law,

and then, the Sponsored Merchant must do so strictly in compliance with all laws, regulations, guidelines or standards (including relating to privacy and the protection of personal information);

- e) take reasonable steps to ensure that the information and documents referred to in paragraph (d) are protected from misuse and loss and from unauthorised access, modification or disclosure;
- f) destroy any document containing Confidential Information that is no longer required to be retained, in a manner which makes the information unreadable;

g) not make any representation in connection with any goods or services which may bind Macquarie, the Provider or any Card Scheme;

h) not indicate or imply that Macquarie, the Provider or any Card Scheme endorses any goods or services or refers to a card in stating eligibility for goods, services or any membership;

i) prominently and unequivocally inform the Client of the Sponsored Merchant's identity at all points of Client interaction (including on any relevant web site, promotional material and invoice) so that the Client can readily distinguish the Sponsored Merchant from any supplier of goods or services of any other third party;

j) provide notice to any Client with whom the Sponsored Merchant enters into a transaction that the Sponsored Merchant is responsible for that transaction, including any goods and services to be provided, related service inquiries, dispute resolution and performance of the terms and conditions of the transaction;

k) provide sufficient training to the Sponsored Merchant's employees to ensure its obligations under this Agreement are met;

l) not refuse to complete a transaction solely because a Client refuses to provide additional identification information in circumstances where Macquarie or

the Provider does not require the Sponsored Merchant to obtain it;

- m) if Macquarie or the Provider has notified the Sponsored Merchant that Clients can be offered an instalment option:
- A. disclose to them in writing whether the instalment terms limit the goods or services that the Client may purchase. The disclosure must also include the shipping and handling charges and any applicable tax;
  - B. ensure that the sum of the instalment transaction does not exceed the total price of the goods or services;
  - C. inform a Client not billed in the transaction currency that each instalment amount may vary due to currency conversion rate fluctuations;
  - D. provide Clients with an easy means of informing the Sponsored Merchant of changes to their card details or their election to cancel the instalment option and action all such Client requests within five (5) business days of such request;
  - E. obtain Authorisation for all transactions; and
  - F. not add any finance charges to the instalment transaction.

## **21. CARD PROCESSING**

- 21.1 Where applicable, the Sponsored Merchant must:
- a) immediately notify the Provider it becomes aware of or suspects fraud on the part of a person presenting a card for use in a transaction;
  - b) only process a transaction as a refund to a Client if it is a genuine refund of a previous sale transaction. For any refund 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;
  - c) if a card transaction for a sale does not cover the full amount of the sale, in the situation in which the card is used to make a deposit or pay an instalment, the Sponsored Merchant may accept the card in payment of all or part of the outstanding balance;
  - d) not state or set a minimum or maximum amount for a card transaction without the Provider's and Macquarie's prior written consent;
  - e) not ask a person presenting a card to the Sponsored Merchant for use in a transaction to reveal any secret identifier;
  - f) contact the Provider for instructions if the identification of a person presenting a card to the Sponsored Merchant for use in a transaction or the validity of the card is uncertain;
  - g) take all reasonable steps to verify the identity of the person the Sponsored Merchant is dealing with, in order to confirm that they are the genuine cardholder, including by observing and implementing the recommendations or procedures of the Card Schemes; and
  - h) record reasonable identification details of the person the Sponsored Merchant is dealing with, as well as the commencement and expiry dates of the relevant

card, in accordance with relevant Privacy Laws and Data Security Standards.

## **22. SPONSORED MERCHANT WEBSITE**

- 22.1 Unless the Provider notifies the Sponsored Merchant in writing that any of the information detailed in clause 22.2 below (in whole or in part) is not required, the Sponsored Merchant must, before accepting any transaction utilising the Services, establish and maintain a website (at its own cost) that complies with the Scheme Rules and with all applicable other laws, regulations, guidelines or standards;
- 22.2 The Sponsored Merchant's website must clearly display the following minimum information:
- a) the relevant business name and Australian Business Number (as applicable) of the entity to whom the website relates;
  - b) the relevant business contact details, including telephone and facsimile numbers, an email address and the street and postal address of the Sponsored Merchant's approved place of business;
  - c) a complete description of the goods and services available for purchase on the relevant website with the price advertised in dollars and, if Macquarie has given its prior written consent, the relevant prices advertised in a foreign currency (if Macquarie has authorised the Sponsored Merchant to process transactions in that currency);
  - d) details of the delivery times for the goods and services. Delivery times are to be appropriate for the type of business. If the delivery is to be delayed, the Client must be notified of the delay and an option provided to them to obtain a refund;
  - e) a clear statement that the business is an Australian business and that all transactions will be billed in Australian dollars. The website may indicate that transactions will be billed in a foreign currency if Macquarie has given its prior written consent allowing the Sponsored Merchant to process transactions in that currency;
  - f) details of any Australian export restrictions (if applicable);
  - g) the privacy policy and how personal information obtained on the website will be dealt with or shared about the Client;
  - h) details of the return and refund policy, including how a transaction can be cancelled by a Client; and
  - i) a description of the measures in place to maintain the security of:
    - A. Clients' account data; and
    - B. any other information which, by notice, Macquarie or the Provider requires to be displayed on the website from time to time.
- 22.3 The Sponsored Merchant must:
- a) maintain a relationship with an internet service provider (at its own cost) for the purposes of maintaining the website for Clients and facilitating email communications; and
  - b) ensure that the business name corresponds with the name of the relevant website and the name that will

- appear on Client statements and as advised on the transaction receipt.
- 22.4 If the Sponsored Merchant wishes to change the:
- internet address;
  - email address; or
  - telephone or fax number,
- appearing on the transaction receipt, it must advise Macquarie and the Provider in writing at least 10 business days prior to the change taking effect.
- 22.5 The Sponsored Merchant must provide Macquarie with reasonable access to view, monitor and audit the pages of the website managed by the Sponsored Merchant upon reasonable request from Macquarie.
- 22.6 The website payments page managed by the Sponsored Merchant must be protected by SSL or any other form of security method approved by Macquarie from time to time.
- 22.7 Prior to commencing live operation of the payment services on the Sponsored Merchant's website, the Sponsored Merchant must undertake and certify testing in test mode to ensure:
- transactions are accessible through the internet payments merchant reporting module; and
  - any reporting requirements are working satisfactorily.

### **23. AUTHORISATION & AUTHENTICATION**

- 23.1 To the extent applicable, the Sponsored Merchant must:
- without limiting the remainder of this clause 23, comply with any Authorisation procedures of the Card Schemes and any Authorisation procedures advised by Macquarie or the Provider from time to time, including those relating to the Sponsored Merchant's payment services transactions;
  - obtain Authorisation from Macquarie prior to the processing of any transaction;
  - for any payment services transaction, submit the expiration date and the three-digit card verification value (CVV) of the relevant card to Macquarie and seek Authorisation via the gateway provider for the Sponsored Merchant's payment services.
- 23.2 For payment services transactions requiring goods to be shipped, the Sponsored Merchant may obtain Authorisation from Macquarie up to seven (7) calendar days before the date on which the goods are actually shipped.
- 23.3 The Sponsored Merchant acknowledges and agrees that obtaining Authorisation for a transaction processed by the Sponsored Merchant is not a guarantee of payment arising from that transaction. An Authorisation only confirms that at the time the Authorisation was obtained that the card number exists and is valid and the card has not been listed as lost or stolen at the time of the transaction and that the card has sufficient funds to cover the transaction. For example, it does not guarantee that the person using the card is the genuine holder of that card.
- 23.4 The Sponsored Merchant acknowledges and agrees that to participate in the Authentication Procedures, it must:
- currently be approved by Macquarie to carry out payment services;
  - have had its payment processing systems, payment services gateway provider or any intermediary it wishes to use approved by Macquarie;
  - maintain and operate the Merchant Software in accordance with all the requirements which

- Macquarie, the Card Schemes or the Provider have notified to the Sponsored Merchant;
- keep any password Macquarie gives it secure and not disclose it to any third party who has not been authorised by Macquarie;
  - comply with all manuals, guides or directions Macquarie, the Provider or the Card Schemes provide from time to time regarding the Authentication Procedures;
  - unless Macquarie agrees otherwise, send Macquarie an Authentication Request each time a Client wishes to purchase goods or services using their card from the Sponsored Merchant's website;
  - immediately take action to remedy any default or non-compliance of which it becomes aware and promptly notify Macquarie and the Provider when there is an expectation to remedy the default or comply, as the case may be; and
  - carry out any additional Authorisation procedures which arise out of Authentication of transactions and of which Macquarie or the Provider advises from time to time.
- 23.5 The Sponsored Merchant must not:
- change its gateway provider for payment services or any intermediary used for the purposes of the Authentication Procedures unless Macquarie has first approved the proposed change; or
  - without the prior written consent of Macquarie or the Provider, use or alter any logos, names, trademarks, get ups or holograms for a Card Scheme for or in relation to the Authentication Procedures.
- 23.6 If the Sponsored Merchant sends Macquarie either:
- a Non-Authenticated Transaction; or
  - an Incomplete Authentication Transaction,
- Macquarie may in its absolute discretion decide to accept the transaction for processing. If Macquarie does agree:
- Macquarie will process it as though the Sponsored Merchant were not participating in the Authentication Procedures and the usual Chargeback provisions in clause 17 of this Agreement will apply; and
  - Macquarie may, but is not obliged to accept any further Non-Authenticated Transactions or Incomplete Authentication Transactions from the Sponsored Merchant for processing.
- 23.7 If the Sponsored Merchant sends a Failed Authentication Transaction, Macquarie will reject it and it will not be processed.
- 23.8 The Sponsored Merchant acknowledges and agrees that:
- the Authentication Procedures are based on Card Scheme requirements which may vary from time to time. The Sponsored Merchant agrees to promptly comply with any variations which are initiated by the Card Schemes or are introduced by Macquarie and of which the Sponsored Merchant is notified in writing by either Macquarie, the Provider or the Card Schemes;
  - Macquarie or the Provider is not liable for any loss or damage (including indirect and consequential) the Sponsored Merchant may suffer or incur as a result of the relevant participation in the Authentication Procedures except to the extent that loss or damage

- or the loss or damage was caused by Macquarie's negligent acts or omissions;
- c) The Sponsored Merchant will be liable for any fines, penalties or similar costs imposed on Macquarie by a Card Scheme because of its conduct arising out of the Authentication Procedures;
  - d) if the Sponsored Merchant sends Incomplete Authentication Transaction it does so at its own risk and understands that in doing so Macquarie may Chargeback the transaction to it on the basis that the cardholder alleges that they did not purchase goods or services from the Sponsored Merchant on its website;
  - e) Macquarie or the Provider may decide to suspend or terminate its participation in the Authentication Procedures in their discretion (acting reasonably); and
  - f) once it is no longer approved to carry out payment services, it will no longer be entitled to participate in the Authentication Procedures and must immediately return to Macquarie the password and any other materials issued to it, including without limitation any guides and manuals regarding the Authentication Procedures which Macquarie or the Provider may have provided to the Sponsored Merchant.
- 23.9 The Sponsored Merchant must comply with any additional terms and conditions Macquarie or the Provider prescribes from time to time in relation to software that may be supplied to the Sponsored Merchant in relation to the Services.
- 23.10 The Sponsored Merchant acknowledges and agrees that notwithstanding that a Client has been issued with a card, or that a transaction has been processed or an Authorisation has been given (either by telephone or electronically), that Macquarie has not guaranteed:
- a) the Client's creditworthiness;
  - b) the correct identity of the Client;
  - c) that the transaction is valid and acceptable and will not be subsequently charged back or reversed; nor
  - d) that the Sponsored Merchant has complied with its obligations under this Agreement.

## **24. INTELLECTUAL PROPERTY**

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- 24.1 The Provider grants to the Sponsored Merchant a non-exclusive licence to use the Intellectual Property for the sole purpose of performing its obligations under this Agreement. The Sponsored Merchant acknowledges that it has no proprietary right or interest in the Intellectual Property other than granted to it under this Agreement.
- 24.2 The Sponsored Merchant must:
- a) only use the Intellectual Property for the purpose of and in the course its business;
  - b) immediately bring to the Provider's notice any acts or threatened acts of infringement or attack on validity of any of the Intellectual Property which may come to its attention;
  - c) not assign, licence or encumber the Intellectual Property;
  - d) not register or record or attempt to register or record anywhere in the world any of the Intellectual Property or any inventions, patents, trade marks, copyright or

- e) designs derived from or similar to the Intellectual Property or aid or abet anyone else in doing so; not, at any time during the Term or after termination, use, deal with or take advantage of the Intellectual Property.

- 24.3 Any discovery, invention, variation, modification or improvement to the Intellectual Property, whether attributable in whole or in part to the Sponsored Merchant, will become and remain the Provider's property and form part of the Intellectual Property.
- 24.4 The Sponsored Merchant hereby assigns to the Provider any intellectual property rights referred to in clause 24.3 that the Sponsored Merchant may create or acquire.

## **25. SCHEME RULES BRANDING**

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- 25.1 The Sponsored Merchant acknowledges and agrees that:
- a) the relevant Card Scheme is the sole and exclusive owner of that Card Scheme's branding, trademarks and other intellectual property;
  - b) the Sponsored Merchant will not contest the ownership of the branding, trademarks or other intellectual property of the Card Schemes;
  - c) a Card Scheme may at any time and for any reason, immediately and without advance notice, prohibit the Sponsored Merchant from using its branding, trademarks or other intellectual property;
  - d) the Card Schemes have the right to enforce any provision of the relevant Scheme Rules and to prohibit the Sponsored Merchant or the Provider from engaging in any conduct that the relevant Card Scheme considers could injure, create a risk of injury or otherwise adversely affect that Card Scheme (including its interchange system and its confidential information); and
  - e) it will not take any action that could interfere with or prevent the exercise of these rights by the relevant Card Scheme.

## **26. USING THE SYSTEM**

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- 26.1 The Provider agrees to grant the Sponsored Merchant unlimited access to the System on the condition that the Sponsored Merchant uses the System in accordance with the terms of this Agreement.
- 26.2 The Provider has the right to upload and download data from the systems in accordance with the terms of this Agreement.
- 26.3 The Sponsored Merchant acknowledges that the security of data and systems is fundamental to the Provider and a security breach may affect the Provider's duties to its Clients, relationships with its employees and legal obligations.
- 26.4 The Sponsored Merchant must ensure that its employees, contractors, sub-contractors, and any other relevant person (**Personnel**):
- a) only use the Systems for the purpose of accessing the Services;
  - b) comply with the Provider's reasonable directions in respect of security;
  - c) take all reasonable steps to ensure that the System is protected from unauthorised access, use, modification, or misuse, disclosure, damage or destruction;
  - d) notify the Provider immediately upon becoming aware of any unauthorised access to or use of the System and do everything possible to minimise and

mitigate the effect of such unauthorised access or use;

- e) take all reasonable steps, including those consistent with good industry practice to ensure that no virus or cyber-security weakness is introduced into the Provider's systems or platforms.

26.5 The Provider may, in its absolute discretion, suspend the Services (including the Sponsored Merchant's access to the System) if:

- a) the Sponsored Merchant materially breaches the terms of this Agreement;
- b) the Agreement is terminated in accordance with clause 28; or
- c) it is otherwise unreasonable for the Provider to continue providing the Services.

## **27. PRIVACY**

27.1 All terms within this clause have the same meaning as provided in the Privacy Laws.

27.2 The Sponsored Merchant and Provider are bound by the Privacy Laws as amended from time to time.

27.3 the Sponsored Merchant and Provider must at all times:

- a) comply with the Privacy Laws in connection with any personal and sensitive information supplied to it by the other party in relation to the provision of the Services under this Agreement; and
- b) comply with the Provider's Privacy Policy.
- c) The Sponsored Merchant agrees for the Provider to access and obtain personal or sensitive information about the Sponsored Merchant's Clients in order to provide the Services.
- d) The Sponsored Merchant acknowledges and accepts that the Provider may be required to notify the Sponsored Merchant's clients and the Office of the Australian Information Commissioner (or any other entity as required by law) of any data breach that may have occurred.

## **28. DEFAULT AND TERMINATION**

28.1 This Agreement will automatically terminate with immediate effect if a Card Scheme de-registers the Provider or if Macquarie ceases to be a participant in the scheme administered by that Card Scheme.

28.2 The Provider may, at its discretion or at the direction of Macquarie or an Card Scheme, terminate this Agreement with immediate effect if the Provider, Macquarie, or the relevant Card Scheme considers that there has been any fraudulent or otherwise wrongful activity in respect of the Sponsored Merchant in connection with its facility, or if the Provider is required to do so by a Card Scheme or by Macquarie under the Scheme Rules or as required by the agreement between the Provider and Macquarie.

28.3 Otherwise, subject to the remaining provisions within this clause 28, this Agreement may be terminated at any time and for any reason by mutual written agreement between

the Sponsored Merchant and Provider upon one (1) month written notice being provided to the other party.

## **29. CONSEQUENCES OF TERMINATION**

29.1 Termination of this Agreement does not relieve a party of liability to the other party in respect of rights or remedies of the other party which have accrued prior to termination.

29.2 Notwithstanding clause 29.1, on termination of this Agreement:

- a) for a period of two (2) weeks commencing after the date of termination or expiry of the Agreement, the Provider may, if reasonably required, assist the Sponsored Merchant in transferring Client information (including Direct Debit Requests) from the System to the Sponsored Merchant or the Sponsored Merchant's replacement service provider. The Sponsored Merchant reserves the right to charge the Sponsored Merchant prevailing hourly market rates depending on the nature for assistance required by the Sponsored Merchant to assist in accordance with this clause 29.2(a);
- b) the Provider will deduct all outstanding Service Fees or other amounts owed by the Sponsored Merchant to the Provider from funds held by the Provider on the Sponsored Merchant's behalf;
- c) the Provider will pay to the Sponsored Merchant the balance of the funds held by the Provider to the Sponsored Merchant;
- d) the Sponsored Merchant has no right to use or obtain any advantage from the Services or the Intellectual Property;
- e) the Sponsored Merchant must immediately return to the Provider or destroy any and all of the Intellectual Property in its possession and control, including any variation, modification or improvement;
- f) the Sponsored Merchant must not copy, retain, store, record, document or computerise any part of the Intellectual Property;
- g) the Sponsored Merchant will not be entitled to any compensation for any loss suffered by it resulting from the termination of this Agreement.

## **30. LIABILITY**

30.1 To the maximum extent permitted by applicable law, the Sponsored Merchant acknowledges that any services supplied to it (including the Services under this Agreement) are supplied on an 'as is' basis. The Provider expressly excludes all representations or warranties, conditions or guarantees, express or implied, in fact or at law, with respect to such services or the subject matter of this Agreement, including in relation to title, merchantability, fitness for purpose and non-infringement. Where such terms are statutorily implied and cannot be excluded, the Provider's liability is limited to the fullest legally permissible extent.

30.2 The Provider will not be liable to the Sponsored Merchant or any third party for any consequential, incidental, indirect, special, punitive or exemplary damages, or for damages related to loss of profits, opportunity, revenue, goodwill,

anticipated savings, inconvenience or any losses of a type referred to in paragraph 7.3.

30.3 Without limiting the generality of paragraph 7.2, to the maximum extent permitted by applicable law, the Provider will not be liable for:

- a) any failure, breakdown or interruption caused by any third party processing, communications and other systems or services on which the payment services are dependent;
- b) any loss of data, personalised settings or other interruptions to the payment services, due to technical or other difficulties;
- c) any unauthorised use of the payment services by the Sponsored Merchant or any viruses, trojans or other harmful code; or
- d) any loss or damage the Sponsored Merchant may suffer resulting from any failure to credit the Provider's bank accounts or any other account, due to technical or administrative difficulties related to the banking system used for the transfer of funds.

30.4 To the maximum extent permitted by applicable law, the Provider's maximum aggregate liability to the Sponsored Merchant in connection with this Agreement is limited to, and will not exceed, the amount of \$100.00.

30.5 The limitations and exclusion of liability in this clause 30 apply regardless of the basis on which such liability arises, whether in contract, tort (including negligence), under statute, indemnity or otherwise) or under any other theory of liability. They also apply whether or not the relevant loss or damage was foreseeable and whether or not the Provider had been advised of the possibility of the loss or damage.

30.6 Notwithstanding the remaining provisions of this Clause 30, if the Sponsored Merchant is a consumer nothing in these terms restricts, limits or modifies the Sponsored Merchant's rights or remedies against the Provider for failure of a statutory guarantee under the ACL.

30.7 If the ACL applies to this Agreement, the maximum liability of the Provider is limited to either (at the sole discretion of the Provider):

- a) the re-supply of the relevant Services; or
- b) the cost of re-supplying the Services.

### 31. CONFIDENTIALITY

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31.1 All parties agree to keep the Confidential Information confidential.

31.2 Except as necessary to fulfil this Agreement, neither party will disclose nor discuss any Confidential Information without the Provider's prior written approval.

31.3 The confidentiality obligations of all parties under this Agreement do not apply to information that a party may be required by law to disclose.

31.4 The obligations of confidentiality in this clause survive the termination or expiry of this Agreement.

### 32. SPECIAL CONDITIONS

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32.1 Any special conditions that are set out at Item 12 of the Schedule will apply and form part of this Agreement (**Special Conditions**).

32.2 Except as otherwise stated in this Agreement, in the event of any inconsistency between the terms of this Agreement

and the Special Conditions, the Special Conditions will prevail.

### 33. GENERAL

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33.1 (**Assignment**) Macquarie may assign, subcontract or otherwise transfer all or any part of its rights or obligations under this Agreement to another person. The Sponsored Merchant must not assign, transfer or otherwise convey any of its rights under or in connection with this Agreement to any third party without Macquarie's prior written consent.

33.2 (**Relationship between Parties**) Unless stated otherwise, the Sponsored Merchant, the Provider and Macquarie remain independent contractors. This Agreement does not create any agency, partnership or relationship of employment between the Sponsored Merchant and either of the Provider and Macquarie. The Provider enters into this Agreement, and those parts of the Agreement which are designated by Macquarie from time to time for the purposes of this clause, on behalf of and as agent of Macquarie.

33.3 (**Jurisdiction**) This Agreement will be governed by the laws of the State of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of that State and the courts that hear appeals from them.

33.4 (**Severance**) Any provision of this Agreement which is invalid or unenforceable will be read down or severed to the extent of that invalidity or unenforceability. The remaining provisions of this Sponsored Merchant Agreement are and will continue to be valid and enforceable in accordance with its terms.

33.5 (**No Waiver**) No failure to exercise and no delay in exercising any right, power or remedy by the Provider under this Agreement will operate as a waiver, nor will any single or partial exercise of any right, power or remedy by the Provider preclude any other or further exercise of that or any other right, power or remedy.

33.6 (**Notice**) A notice required to be given to a party is treated as having been given in any of these ways:

- a) by being delivered by hand to the party;
- b) 48 hours after being sent by prepaid mail to the address of the party; or
- c) on confirmation by the sender's facsimile or email system if sent by facsimile or email communication to the facsimile or email system of the other party.

33.7 (**Amendments**) An amendment to this Agreement is only effective once it is made in writing and executed by all parties.

33.8 (**Costs**) Each party will bear its own costs in relation to the preparation, negotiation and execution of this Agreement. The Sponsored Merchant must pay on demand all of the Provider's costs (including legal fees on an indemnity basis) incurred by the Provider in relation to the Sponsored Merchant's breach of this Agreement.

33.9 (**Inconsistency**) In the event of any inconsistency between this Agreement and the requirements set out in the Scheme Rules, the Scheme Rules prevail to the extent of such inconsistency.

