

Suncorp Virtual POS Terms and Conditions for a Suncorp Virtual POS Merchant Facility

Issued by Suncorp-Metway Ltd ABN 66 010 831 722

Contents

1	Introduction	5
	1.1 Welcome	5
	1.2 The Suncorp Virtual POS Contract	5
	1.3 Acceptance	5
2	Interpretation and Definitions	5
	2.1 Interpretation	5
	2.2 Consents or approvals	5
	2.3 Definitions	5
3	Conditions	7
	3.1 Conditions you Agree to	7
	3.2 Conditions we Agree to	7
	3.3 Using a Suncorp Virtual POS Merchant Facility	7
4	Provision of Service	7
	4.1 Supply	7
	4.2 Using the Service	7
	4.3 Installing the Service	8
	4.4 Training	8
5	Cards	8
	5.1 Cards Accepted	8
	5.2 Not Accepting Cards	8
	5.3 Regulations for Credit Card Decal Display	8
6	Cardholder Creditworthiness	8
7	Processing Transactions	8
	7.1 General Information	8
	7.2 Refund Transactions	8
	7.3 Cardholder Information Data Security Standards	9
	7.4 Data Breach	9
8	Mail Order/Telephone Order (MOTO) & E-Commerce Transactions	9
	8.1 Mail Order / Telephone Order Transactions	9
	8.2 E-Commerce Transactions	10
9	Hotel Merchants – Transaction Processing Requirements	10
	9.1 Hotel Reservation Service	10
	9.2 Hotel Merchants – Processing Transactions	11

10	Car Rental Merchants	11
	10.1 Car Rental Transaction Processing Requirements	11
11	Recurring Transactions	12
12	Invalid Transactions	12
	12.1 List of Invalid Transactions	12
	12.2 Other Transactions which could be Invalid	12
13	Settlement and Payment of Transactions	13
14	Your Records	13
15	Costs, Fees and Payments	13
16	Termination	13
	16.1 Ending the Suncorp Virtual POS Contract	13
	16.2 Disclosure of Termination	14
17	General Rights	14
	17.1 Advertising	14
	17.2 Default and Enforcement Expenses	14
	17.3 Indemnity	14
	17.4 Variation and Waiver	15
	17.5 Your Rights and our Rights	15
	17.6 Notices	15
	17.7 Tax Invoice	15
	17.8 Governing Law, Rules and Regulations	15
	17.9 GST	15
	17.10 Third Parties	15
	17.11 Your Information	15
18	Acceptance of Transactions by Other Persons at Premises	16
19	Code of Banking Practice	16
20	Grant of License	16
21	No Maintenance	16
22	Duration of License	16
23	Documentation	16
	23.1 Documentation existence	16
	23.2 Use of Documentation	16
	23.3 Use of Example Code	16

24	Liability	16
	24.1 No warranty as to suitability	16
	24.2 Exclusion of terms and warranties	17
	24.3 Statutory warranties	17
	24.4 Indemnity by Merchant	17
	24.5 Security	17
	24.6 Benefit of License to Owner and MasterCard	17
25	Use of Software	17
	25.1 Normal operating procedures	17
	25.2 No copying or reproduction	17
	25.3 Copying permissible for data backup or testing	17
	25.4 No Harmful Use or unreasonable interference	18
	25.5 Use only at Site	18
	25.6 Relief	18
26	Rights in the Software	18
	26.1 Rights in the Software	18
	26.2 Marks of ownership	18
	26.3 Termination	18
27	Modifications and reverse engineering	18
	27.1 No modification	18
	27.2 No reverse engineering	18
	27.3 No Export	18
	27.4 Encryption	18
28	Confidentiality	18
	28.1 Confidentiality	18
	28.2 No Disclosure	18
	28.3 Return on Termination	19
29	Assignment	19
30	General Provisions	19
	30.1 Entire agreement	19
	30.2 Amendment	19
	30.3 Severability of provisions	19
	30.4 No waiver	19
	30.5 Further assurances	19
	30.6 Survival	19
	30.7 Governing law and jurisdiction	19
	30.8 Force Majeure	19

1 Introduction

1.1 Welcome

Thank you for selecting Suncorp for your Virtual POS Merchant Facility.

We encourage you to take the time to read the Suncorp Virtual POS Terms and Conditions, as they outline your responsibilities when using your Merchant Facility to process Transactions. Should you have any questions relating to this document or any of the other documents that form part of your Suncorp Virtual POS Contract, please call us on 13 11 75.

1.2 The Suncorp Virtual POS Contract

We have agreed to provide you with a Suncorp Virtual POS Merchant Facility on the Terms and Conditions set out in your Suncorp Virtual POS Contract.

Your Suncorp Virtual POS Contract is made up of:

- these Terms and Conditions for a Suncorp Virtual POS Merchant Facility; and
- the Letter of Offer; and
- any guides provided to you relating to your Merchant Facility; and
- any agreements made regarding the use of any Software; and
- any other Terms and Conditions we tell you apply to your Merchant Facility.

Some words have special meanings in these Terms and Conditions and those words are defined in Section 2 under 'Interpretation and Definitions'.

1.3 Acceptance

These Terms and Conditions contain important information about your responsibilities, obligations and potential liability when you process Transactions on your Suncorp Virtual POS Merchant Facility.

You accept this Suncorp Virtual POS Service Contract when you process your first Test Transaction, during the installation and testing of the Suncorp Virtual POS Merchant Facility.

Before you process any Transactions, we recommend that you read thoroughly:

- these Terms and Conditions;
- any guides provided to you relating to your Merchant Facility; and
- the Letter of offer.

2 Interpretation and Definitions

2.1 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise: (a) The **singular** includes the plural and conversely. (b) A **gender** includes all genders. (c) If a word

or phrase is defined, its other **grammatical forms** have a corresponding meaning. (d) A reference to a **person**, corporation, trust, partnership, unincorporated body or other entity includes any of them. (e) A reference to a **Clause** or Schedule is a reference to a Clause of or a Schedule to this License. (f) A reference to an **agreement or document** (including a reference to this License) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this License or that other agreement or document. (g) A reference to a **party** to this License or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives). (h) A reference to **legislation** or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it. (i) the word "including" is not a word of limitation. (j) **Person** includes the firm, body corporate, unincorporated association or authority and the successors and assigns thereof

2.2 Consents or approvals

If the doing of any act, matter or thing under or in relation to this License is dependent on the consent or approval of a person or is within the discretion of a person, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the person in its absolute discretion.

2.3 Definitions

The following words have the meanings described below.

"Account" means an **account** into which funds from Transactions are paid or fees and charges for this Suncorp Virtual POS Merchant Facility are debited.

"Agreed Costs" means the fees and charges set out in your Letter of Offer and any other fees or charges that may from time to time be imposed by us at the times and in the manner specified by us.

"Authorisation" means an **authorisation** message you receive from a Card Issuer when you process a Transaction through the Suncorp Virtual POS Merchant Facility or ask for an **Authorisation**.

"Banking day" means a day Suncorp is open for general banking business in Brisbane.

"Card" means a Credit Card that we accept within the terms of this Merchant Contract

"Card Scheme" means the MasterCard, VISA Card and EFTPOS Payments Australia Schemes or any other Credit Card schemes approved by us from time to time

"Cardholder" means the person to whom a Card has been issued;

"Chargeback" means a debit to your Account, which we process, for the reversal of a Transaction, which the Cardholder has disputed.

"Commencement Date" means the date the Merchant first receives delivery of the Software.

"Credit Card" means a Card that can be used to process a Transaction through the Visa, MasterCard, American Express (AMEX), or Diners Club International Schemes or their international affiliates which bear the applicable Card Scheme marks.

“Credit Card Fee” means a surcharge you are permitted to charge a Cardholder to recover the cost of processing a Transaction made using a Credit Card.

“Distributor” means Suncorp-Metway Ltd.

“Documentation” means and includes, without limitation, any operating manuals, reference manuals, operating guides, release and design notes and any publications, Example Code and other written materials which are supplied to the Merchant from time to time in connection with the use of the Software by the Merchant pursuant to this License.

“E-Commerce” means a Transaction involving an order and payment for goods or services communicated using the Internet.

“Example Code” means un-compiled software code or code fragments illustrating the use of the Software.

“Governmental Agency” means any government or any governmental, semi-governmental or judicial entity or authority. It also includes any self-regulatory organisation established under statute or any stock exchange.

“GST” means Goods and Services Tax or any tax imposed by or through the GST Law on supply (without regard to any input tax credit).

“GST Law” has the meaning attributed to it in A New Tax System (Goods and Services Tax) Act 1999. This expression also includes if necessary or required any legislation which is intended to validate, recapture or recoup any GST or tax imposed by any Act otherwise included within the definition of GST Law.

“Interchange Fee” means the fee charged by the Card scheme to the bank for processing a certain Card type. These fees are the same for all Financial Institutions.

“Invalid Transactions” means a Transaction that is listed as an “Invalid Transaction” in clause 12 of these Terms and Conditions.

“Letter of Offer” means a letter we give you concerning the Suncorp Virtual POS Merchant Facility.

“License” means the licence granted by Distributor to the Merchant under this document.

“Mail Order or Telephone Order Transactions” means a Credit Card Transaction you process without the physical presence of the Card at the time the Transaction is made.

“MasterCard” means MasterCard Asia/Pacific (Australia) Pty Ltd and, unless specified otherwise, it’s Related Bodies Corporate.

“Merchant” means the person with whom Suncorp has entered into a Suncorp Virtual POS Contract and where more than one person, “Merchant” means each person separately and two or more persons jointly. “Merchant” includes the Merchant’s administrators, successors and assigns.

“Merchant Facility” means the software and any other equipment as provided by us, or any third party, in relation to the Suncorp Virtual POS Contract to facilitate online Credit Card payments to a Merchant.

“Merchant Operating Guide” means the manual.

“Merchant Service Fee” means a portion of the total value of all Credit Card Transactions carried out by the Merchant and payable to Suncorp.

“Message” means an electronic communication from the Merchant’s server to the Suncorp Virtual POS Merchant Facility or vice versa, in the format currently prescribed by Suncorp.

“MiGS Payment System” means the electronic payments system forming part of the MasterCard Internet Gateway Service, also known as “MiGS”, through which the Merchant may make various electronic payment methods available to its customers.

“MiGS Processing Services” means the Payment processing services using the MiGS Payment System to be provided by MasterCard to the Distributor to enable the processing of payments made by the Merchant’s customers.

“Owner” means Dialect Payment Technologies Pty Ltd (ACN 052 950 375) and its Related Bodies Corporate.

“Notice” means a notice, request; consent or other communication related to this Merchant Contract that we give you.

“PCI DSS” means Payment Card Industry Data Security Standards. This refers to the data security standards mandated by Visa and MasterCard to facilitate the protection of Cardholder payment data from unauthorised access. This standard applies to any party that processes, stores or transmits Card data.

“Premises” means the place of business from which the business operates.

“Security” means any guarantee and indemnity, mortgage, charge or other security interest including a term deposit and authority to set off deposits as We may request You provide to us under clause 24.5.

“Site” means the location occupied by the Merchant at which the Distributor has authorised in writing the Software to be used, any third party hosting facilities at which the Merchant or its service provider operates some or all of its infrastructure and, where a Merchant accesses and uses software under an application service or outsourced arrangement, a site of the service provider; and, in respect of the Virtual Payment Client, means the location from which the Merchant initiates a connection to the Virtual Payment Client interface on the MiGS Payment System. The Site must not be located in any US sanctioned or embargoed nation.

“Software” means, as applicable depending on what the Merchant is provided to use: (a) the Merchant Software, being a piece of thin client software integrated into a Merchant’s host system, via which the MiGS Payment System communicates with the Merchant. The Merchant Software is downloaded and integrated into a Merchant’s payment system by the Merchant or its designated integrator. The MiGS Payment System allows the Merchant to validate successful connectivity and Transaction processing against a test simulator, prior to flagging the Merchant as a live production Merchant. From time to time MasterCard may require updates to the Merchant Software, which will be distributed to Merchants for integration; or (b) the Virtual Payment Client.

“Suncorp Service Fee” means the fee Suncorp charge on top of the Interchange Rate Fee charged by the Card Schemes

“Suncorp, We / Us” means Suncorp-Metway Ltd ABN 66 010 831 722 and includes its successors or assigns.

“Suncorp Virtual POS Contract” means the agreement between you and Suncorp for the Merchant Facility made up of the Letter of Offer, Terms and Conditions and Suncorp Virtual POS Operating Guide.

“Suncorp Virtual POS Operating Guide” means the manuals we provide for operating and integrating your Merchant Facility.

“Tax” includes any tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding that is levied or imposed by a Governmental Agency, and any related interest, penalty, charge, fee or other amount.

“Tax Invoice” has the meaning attributed to it in the GST Law.

“Terms and Conditions” means the Terms and Conditions for a Suncorp Virtual POS Merchant Facility set out in this document and other terms and conditions contained in any documents issued by Suncorp and as amended from time to time.

“Transaction” means the purchase of goods and/or services from the Merchant by the Cardholder via the internet.

“Related Bodies Corporate” has the meaning given to that term in section 9 of the Corporations Act 2001 (Cth).

“Use”, in respect of the Virtual Payment Client, means communicating with the MiGS Payment System via the Virtual Payment Client interface.

“Virtual Payment Client” means an interface on the MiGS Payment System, provided to the Merchant to facilitate the connection of the Merchant to the MiGS Payment System and does not include Example Code.

“You” means the Merchant. “Your” and “Yourself” has a corresponding meaning.

3 Conditions

3.1 Conditions you Agree to

You agree you will:

- process Transactions according to your Suncorp Virtual POS Contract;
- be bound by the Terms and Conditions of your Suncorp Virtual POS Contract, and that these Terms and Conditions also apply upon expiry of your minimum term contract;
- comply with all relevant laws, rules and regulations relating to the acceptance of Transactions for processing including the Card Scheme rules and regulations;
- act in our interests in providing and promoting our Merchant Facility and processes so Cardholders can effect Transactions with you;
- not act negatively towards our brands or the goodwill of the Card Schemes or Suncorp;
- only submit Transactions for processing that have not infringed upon the intellectual property rights of another;
- not submit for processing any Transactions that are illegal;
- be bound by any regulations, by-law or rules we make under your Suncorp Virtual POS Contract

- authorise us to obtain a copy of your credit reference at any time during your Suncorp Virtual POS Contract, where permitted by law;
- make sure all information you give us is true and correct;
- clearly and prominently disclose to a Cardholder if a Credit Card Fee will apply to the Transaction and the amount of the Credit Card Fee (expressed as a dollar figure or a percentage), before the Cardholder enters into the Transaction;
- ensure that your business and any Service Providers who participate in the transmission, acceptance or storage of Card payment details for your business on your behalf, fully comply with the PCI DSS standard;
- follow all the procedures we give you for making a sale or refund;
- advise us immediately if your Suncorp Virtual POS Merchant Facility is tampered with;
- not process any Transactions utilising your own Credit Card on your Suncorp Virtual POS Merchant Facility unless you are purchasing goods/services for your own use;
- keep confidential any Cardholder information you receive;
- not connect us in any binding way with the sale of goods and services.
- not process transactions on behalf of any other businesses through your Merchant Facility.
- not set a minimum or maximum Transaction amount as a condition of honouring a Card Scheme Card.

3.2 Conditions we Agree to

We agree we will process all valid Transactions you accept under this Suncorp Virtual POS Contract.

3.3 Using a Suncorp Virtual POS Merchant Facility

You must only use our Suncorp Virtual POS Merchant Facility according to the instructions in these Terms and Conditions and Suncorp Virtual POS Operating/Integration Guide.

4 Provision of Service

4.1 Supply

We will supply you with access to the Suncorp Virtual POS Merchant Facility and any relevant Software required to access this service. We shall also provide you with electronic copies of the Suncorp Virtual POS Operating Guides.

4.2 Using the Service

You must only use the Suncorp Virtual POS Merchant Facility and must do so according to the instructions in these Terms and Conditions and the Suncorp Virtual POS Operating Guides. Failure to do so may result in termination of your Merchant Facility.

4.3 Installing the Service

You will take all responsibility for the installation of the Suncorp Virtual POS Merchant Facility and its associated components as per the instructions provided within the Suncorp Virtual POS Operating Guides.

4.4 Training

We shall provide written material in the form of the Suncorp Virtual POS Operating Guides. No formal on-site or over-the-phone training shall be provided.

5 Cards

5.1 Cards Accepted

5.1.1 You can process Transactions for:

- All Cards displaying the MasterCard or VISA Card Scheme logo, or their international affiliates for Transactions, involving a Credit Card.

Unless we authorise you to and you have a separate agreement with other schemes (e.g. American Express, Diners Club) you cannot process Transactions for those schemes. If we authorise you to process Transactions for other schemes we can charge you a fee.

5.2 Not Accepting Cards

5.2.1 You must not process Transactions for Cards when:

- We ask you not to; or
- After this Suncorp Virtual POS Contract has ended.

5.2.2 If you no longer process Transactions you need to stop displaying Card decals and publicity material pursuant to this Suncorp Virtual POS Contract.

5.3 Regulations for Credit Card Decal Display

You need to display all Credit Card decals at the point of sale interaction to indicate to your customer that you accept these Cards. The decals need to be clearly visible to the public.

6 Cardholder Creditworthiness

Just because a Cardholder has been issued with a Card or has had a Transaction processed or Authorisation given in respect of a Transaction, it does not guarantee or confirm:

- the validity of the Transaction;
- the identity of the Cardholder;
- the Cardholder is creditworthy; or
- that you have followed the Terms and Conditions of this Suncorp Virtual POS Contract.

You cannot make a claim against us that we have guaranteed or confirmed any of these matters.

7 Processing Transactions

7.1 General Information

You must:

- only use authorised Software issued by Suncorp for Transactions under this Merchant Contract;
- upon written notification from Suncorp, supply us with full details of your Web Hosting providers, Shopping Cart Vendor System, SSL provider and expiration date of SSL certificate. You must also disclose details of all service providers you engage with to enable the acceptance of Credit Card payments and their compliance with PCI DSS;
- only process Mail Order or Telephone Order Transactions and E-commerce Transactions if we have expressly agreed to this in writing;
- prominently display or make accessible to the customer upon request, a fair policy, which deals with:
 - refunds and disputes; and
 - your refund policy should be displayed on your website;
- process all Transactions immediately through the Transaction processing Software;
- process all reversal or adjustment Transactions within thirty (30) calendar days of the original Transaction if the original Transaction was in error;
- only submit the Transaction for processing once:
 - the Transaction is completed; or
 - the goods or services have been shipped or provided; or
 - the purchased service is provided;
- process all Transactions in Australian dollars unless we authorise you in writing to do otherwise;
- not process a Transaction that has previously received a declined authorisation message;
- not process a Transaction or refund against a personal Card as a method to transfer funds.

7.2 Refund Transactions

7.2.1 You must:

- complete a refund Transaction to the Card that was used for the original purchase if a Cardholder returns the goods and the right to return the goods was a condition of the Transaction. Do not refund in cash;
- if the return of the goods or the cancellation of the service requires a price adjustment then the refund Transaction is still required to be completed to the original Card that was used for the original purchase, and it cannot be refunded in cash; and
- not process a refund that doesn't relate to an original sale.

7.2.2 You are liable for any unauthorised refund Transactions processed and any unauthorised use of the refund password. You should change your password and advise us if for any reason you think it has become known to persons other than those you have authorised to complete refund Transactions. You should not visibly display your refund password.

7.3 Cardholder Information Data Security Standards

If you store Card related payment information in any format you need to comply with the global Payment Card Industry Data Security Standard (PCI DSS). This standard is designed to protect the confidentiality, availability and integrity of customer data. Suncorp may ask you to show compliance to these standards at your cost via a self-compliance questionnaire, a network scan and / or an on-site security assessment using Scheme qualified personnel.

You are required to complete PCI DSS accreditation within 3 months of our notification for you to complete this accreditation.

Non completion of the PCIDSS accreditation program will place your facility in the noncompliant status which will attract noncompliance fines from the Card Scheme which will be passed on to you.

7.4 Data Breach

You must comply with the Data Breach procedures detailed below immediately upon suspected or known breaches of confidential Cardholder payment details, whether or not the breach has occurred through your Service Provider or otherwise. You must:

- Identify the cause of the event and immediately notify Suncorp;
- Isolate or unplug any affected systems from all affected networks;
- Cease installing or making any changes to software;
- Tighten security controls pertaining to all affecting networks;
- Implement and follow a disaster recovery plan as required by an Accredited Gateway Provider/Data Processor;
- Maintain a rigorous audit trail of all actions taken to isolate and rectify the event;
- Commence calculating the gross potential exposure that may arise from such event and notify Suncorp in writing of the results of such calculations as soon as possible, but in any event within a 24 hour period of the Data Breach.

If your company has suffered a Data Breach:

- You must give Suncorp and its agents full access to your systems and databases to facilitate a forensic analysis to ascertain:
 - what Card data has been compromised;
 - what weaknesses in the system permitted the unauthorised access to the database; and
 - whether Card data was created, deleted, altered, copied or manipulated in any manner.

- If you use the services of an external Service Provider, you must ensure that Suncorp and its agents are given full access to necessary outsourced components such as databases and web hosting systems.
- All costs of the forensic analysis will be passed on to you.
- In order to continue processing Card transactions, you will have to undergo a full PCIDSS accreditation. All costs of this accreditation exercise will be borne by you.

Suncorp is obliged to report all Data Breach events to Card Schemes, law enforcement agencies and/or Australian regulators. Your acceptance of these Terms & Conditions confirms that you understand this obligation and grant irrevocable and enduring consent for Suncorp to release details of any such Data Breach to the aforementioned bodies.

Your acceptance of these Terms & Conditions irrevocably confers upon Suncorp the enduring right to contact any Service Providers that enable you to acquire Credit Card transactions. This clause is limited to the purpose of determining the extent of a Data Breach, assessing remedies for that Data Breach and assessing your level of compliance with PCIDSS.

8 Mail Order/Telephone Order (MOTO) & E-Commerce Transactions

To the extent that there is any inconsistency between this clause and any other clause within these Terms and Conditions, this clause will apply.

For all Cardholder Not Present Transactions due to the high risk nature of Cardholder disputes you must be aware that you will be liable for any disputed Transaction.

8.1 Mail Order / Telephone Order Transactions

All Mail and Telephone Order Transactions when processed through the Suncorp Virtual POS Merchant Facility will automatically obtain an authorisation as part of the Transaction.

8.1.1 It is accepted that Transactions based on Mail or Telephone Orders may be completed without the Cardholder's signature. For all Mail / Telephone Order Transactions you must provide the Cardholder, if requested, a receipt containing the information set out below, as soon as possible after processing a Transaction:

- Transaction amount;
- date (and time if practical);
- a description that identifies the goods or services provided;
- the account type; and
- details of Card and Merchant.

- 8.1.2 For all Telephone Order Transactions, in addition providing the information required in clause 8.1.1, you must provide a receipt number for the Transaction and keep a record of the number.

8.2 E-Commerce Transactions

All E-Commerce Transactions when processed through the Suncorp Virtual POS Merchant Facility will automatically obtain an authorisation as part of the Transaction.

- 8.2.1 Suncorp will only authorise you to process E-Commerce Transactions where your web site includes all of the following information:
- Your ABN;
 - a full description of the goods or services being offered;
 - details of all prices, fees and charges including delivery charges in Australian dollars;
 - a reference to your 'Doing Business As' (DBA) name that will appear on the Cardholder's statement;
 - details of how the goods will be delivered and by when;
 - your policy for returning goods, refunds and disputes;
 - your contact details including Email address, phone number and a street address which must be in Australia;
 - your consumer data privacy policy which is to include your security capabilities and the policy for transmission of payment Card details;
 - delivery policy;
 - details of any restrictions including quarantine, export or legal requirements; and;
 - your business address and the disclosure of your outlet address at the time of presenting payment options to the Cardholder.
- 8.2.2 You must:
- keep all information on your website true, accurate and up to date;
 - not significantly modify the type of goods or services you offer via your website without notifying us;
 - not offer for sale goods or services or display material that are illegal, obscene, offensive or are otherwise inappropriate and not violate any applicable law or regulation;
 - not store, keep, retain or make accessible to anybody any Cardholder information, including the full Card number to the Cardholder unless we agree or if required by law; and
 - display images of the Card types accepted.
- 8.2.3 You must ensure that the Cardholder can print out a receipt which contains the information listed below from your Internet site:
- Transaction amount;
 - date (and time if practical);

- a description that identifies the goods or services sold;
- the account type; and
- details of Card and the Merchant's DBA (doing Business as) name.

- 8.2.4 You are responsible for all goods and services offered at your website, all materials used or displayed at the website, and all acts or omissions that occur at the website or in connection with your website.
- 8.2.5 The E-Commerce Transaction must be processed in accordance with the Suncorp Virtual POS Operating Guides.
- 8.2.6 You warrant that your website is secure and that Cardholder information will be kept secure.
- 8.2.7 Where the service is supported you must display both the Verified by Visa and MasterCard secure Code on your website.
- 8.2.8 We will not accept Merchants who promote, sell, or deal in any way or manner in patently offensive material which is deemed unacceptable for sale by us or the Credit Card Schemes such as child pornography.

9 Hotel Merchants – Transaction Processing Requirements

9.1 Hotel Reservation Service

All Hotel Merchants need to participate in the Hotel Reservation Service.

This service stipulates that the Merchant must:

- obtain the Cardholders name, Card Number, Name embossed on the Card and Card expiration date for its billing information;
- quote the reserved accommodation rate and the exact name and physical address of the accommodation location;
- inform the Cardholder that one night's lodging will be billed if the Cardholder has not either:
 - registered by check-out time the day following the scheduled arrival date;
 - properly cancelled the reservation;
- provide a reservation / confirmation code and advise the Cardholder to retain this in case of a dispute;
- if requested by the Cardholder provide written confirmation of the following information:
 - cardholder name, Card number and Card expiration date
 - confirmation code;
 - exact physical address of the establishment;
 - the Hotel Reservation Service provisions relating to the Cardholder's obligation;
 - any other reservation details.

9.1.1 Cancellations

You must:

- Accept all cancellations prior to the specified time.
- Not require cancellation notification more than 72 hours prior to the scheduled arrival date. If the Cardholder makes the reservation within 72 hours of the scheduled arrival date, the cancellation deadline must be no earlier than 6.00pm Merchant outlet time on the arrival date or date guaranteed.

If you require the Cardholder to cancel before 6.00pm for the outlet time on the date guaranteed then you must mail the cancellation policy, including the date and time that the cancellation privileges expire to the Cardholder.

- Provide a cancellation code and advise the Cardholder to retain it in case of a dispute.
- If requested by the Cardholder mail a confirmation of cancellation which is to include the Cardholder's name, Card number, Card expiration date, the cancellation code and any other cancellation details.

You must hold the room(s) available according to the Reservation until check out time the following day if the Cardholder has not claimed or cancelled the Hotel reservation. When this situation has occurred the Merchant must complete a Transaction that contains the following:

- amount of one nights lodging plus applicable tax;
- date of no show;
- assigned room number;
- Cardholder name, Card number and Card expiration date;
- Words 'No-Show' on the signature line of the Transaction Receipt.

If you have not held the room for the Cardholder and they arrive within the specified period you are obligated to provide a room. If you are unable to provide a room, you are obligated to provide at no additional charge a comparable room for one night, transportation to the other accommodation house, and a three minute domestic or long distance telephone call, whichever the Cardholder deems necessary to advise of the change of location.

If you have accepted a Cardholder's booking through a third party booking agency and the Cardholder cancelled their reservation according to the third party booking agency's cancellation policy and they have a cancellation number, then you can not process a 'No Show' Transaction to the Cardholder's Card. These instances are to be resolved between you and your appointed third party booking agent – not the Cardholder.

9.2 Hotel Merchants – Processing Transactions

9.2.1 Authorisation Procedures

When the Transaction is initiated you must request an authorisation for an estimated Transaction amount.

You may estimate the Transaction amount for authorisation based on the following:

- Cardholder's intended length of stay;
- Room rate;
- Applicable tax;
- Service charge rates.

9.2.2 Subsequent Authorisation Requests

If the Card issuer declines a subsequent authorisation request, you are guaranteed to have processed the cumulative amount of previous authorisations plus 15%.

9.2.3 Delayed or Amended Charges

For a delayed or amended charge Transaction you must:

- Process the Transaction within 90 calendar days of the Transaction date of the related Transaction.
- Only include such items as room, food or beverages charges.
- Have the Cardholder's consent to be liable for delayed or amended charges.
- Create a Transaction receipt that includes the words Signature on file.
- Send a copy to the Cardholder at the address shown on your records.

10 Car Rental Merchants

10.1 Car Rental Transaction Processing Requirements

10.1.1 Authorisation Procedures

When the Transaction is initiated you must request an authorisation for an estimated Transaction amount.

The estimated Transaction amount for authorisation can be based on the following:

- Cardholder's intended car rental period
- Rental rate
- Applicable tax
- Mileage rates.

You can not include charges representing either the vehicle insurance deductible amount or the amount to cover potential damages when the Cardholder waives insurance coverage at the time of the rental. You must disclose to the Cardholder at the time of the rental the amount for which the authorisation was obtained.

10.1.2 Charges for Loss, Theft or Damages

A charge for loss, theft, or damage must be processed as a separate Transaction from the original car rental period. The Cardholder must authorise the charge after being informed of the loss, theft or damage once you are able to provide a reasonable estimate of the cost to repair the damages etc. If the Cardholder chooses to pay for the repairs using their Card, you must:

- Provide the estimated amount for repairs indicating that the amount will be adjusted accordingly pursuant to completion of the repairs and submission of the invoice for such repairs.

The final Transaction amount may not exceed your estimated amount by more than 15%. If the final cost of repairs is less than the estimated amount then you must complete a refund Transaction.

You have 30 days from the date of the subsequent Transaction related to damages to submit the item to be cleared.

10.1.3 Subsequent Authorisation Requests

If the Card issuer declines a subsequent authorisation request, you are guaranteed to have processed the cumulative amount of previous authorisations plus 15%.

10.1.4 Delayed or Amended Charges

For a delayed or amended charge Transaction you must:

- Process the Transaction within 90 calendar days of the Transaction date of the related Transaction;
- Only include such items as fuel, insurance, rental fees, damage to rental vehicles, parking tickets, and traffic violations;
- Have the Cardholder's consent to be liable for delayed or amended charges;
- Create a Transaction receipt that includes the words Signature on file;
- Send a copy to the Cardholder at the address shown on the rental contract;

For parking tickets or traffic violations, you must provide documentation from the appropriate authority, including the license number of the rental vehicle, time and location of the violation, statute violated and the amount of the penalty in local currency;

For rental car damage the Merchant must provide all of the following:

- Copy of the rental agreement;
- Estimate of the cost of the damages from an organisation that can legally provide repairs in the Car Rental Company's country;
- Civil authority's accident report (if applicable);
- Documentation showing the Cardholder's consent to pay for damages with their Credit Card;
- Any other pertinent documentation available to demonstrate the Cardholder's liability;
- Copy of your insurance policy your car rental company requires that the Cardholder pay an insurance deductible for damages. In lieu of the insurance policy you can provide a copy of the car rental agreement showing the Cardholders' consent to be responsible for the insurance deductible as indicated by their signature or initials. The Cardholders' signature must be in proximity to the disclosure.

11 Recurring Transactions

If you take recurring Transactions you must:

- Obtain the Cardholder's permission to periodically charge for recurring services. This permission can be in a format including, but not limited to, Email or other electronic records or hard copy correspondence;
- Retain this permission for the duration of the recurring services and provide it upon our request;
- Provide a simple and easily accessible online cancellation procedure if the Cardholder requested the goods or services online initially.

12 Invalid Transactions

12.1 List of Invalid Transactions

A Transaction is an Invalid Transaction if:

- the Transaction is illegal;
- the Transaction is not authorised by the Cardholder or authorised Card user;
- the Transaction is split over two or more Credit Cards;
- you request or use a Card number for any purpose other than as payment for the goods and / or services;
- you charged more than your normal price for goods and services (except where you are permitted to charge a Credit Card Fee);
- the Transaction is to collect or refinance an existing debt using a Credit Card (including dishonoured cheques);
- you did not supply or do not intend to supply the goods or services;
- a refund Transaction does not relate to an original sale;
- you processed a Transaction knowing or in circumstances where you should have known that the Card is being used without the authority of the Cardholder;
- you were notified by us not to accept the Card being used in the Transaction(s);
- a Transaction is processed on behalf of another Merchant or person;
- Australian dollars are not used;
- the goods or services are not supplied from within Australia (unless we have consented to supply from an international location);
- this Suncorp Virtual POS Contract was not valid on the date of the Transaction;
- you did not act in accordance with the Terms and Conditions of the Suncorp Virtual POS Contract in relation to the Transaction;
- you processed a Transaction knowing (or in circumstances where you should have known) that the Transaction is fraudulent;
- a Mail Order, Telephone Order or E-Commerce Transaction was processed without specific prior authorisation in writing from us to process this type of Transaction.

12.2 Other Transactions which could be Invalid

We can decide whether or not a Transaction is invalid if:

- the Cardholder disputes liability for the Transaction for any reason;
- there is a set-off claim or counterclaim; or
- at a later stage we identify that a Transaction is invalid.

13 Settlement and Payment of Transactions

- 13.1.1 You must hold a business account with Us in the same name as your Merchant Facility:
- into which we can pay the full amount of all valid, acceptable sales Transactions you have made less any valid, acceptable refund Transactions you have made;
 - from which we can deduct all relevant fees, charges, and charge back invalid Transactions.
- 13.1.2 We may refuse to accept or may charge back any Invalid Transactions we have processed to your Account or any other account you have with us.
- 13.1.3 We reserve the right, where we suspect that a Transaction is an Invalid Transaction, to:
- withhold payment; and
 - place a hold on your Account or any other account you have with us for an amount equal to the amount we believe could become owing to Suncorp in respect of the Transaction.
- 13.1.4 We will investigate a Transaction and either:
- pay the Transaction;
 - refuse to process the Transaction and return the Transaction to you; or
 - where the Transaction has been processed, charge back the Transaction.
- 13.1.5 You agree and authorise us to monitor Transactions you process and the use of the Suncorp Virtual POS Merchant Facility and investigate Transactions we find suspicious.

14 Your Records

For all Transactions, you must keep records for 13 months after the Transaction date in a secure location. In addition, you must keep any evidence of the Cardholder's request to order the goods or services and instructions to process the Transaction for at least 13 months (e.g. order form, fax advice etc).

You must give us evidence satisfactory to us of a Transaction within 7 days if we ask for it or upon demand in special circumstances (eg legal proceedings). If you cannot do this and we cannot collect the amount of the Transaction from the Cardholder, we can debit your Account for the Transaction amount.

You must keep records of accounts, receipts, invoices and other documents relating to your obligations under this Suncorp Virtual POS Contract.

You must let us examine your records relating to any Transaction. You must give us copies of these records, at your expense, if we ask for them. You agree to allow us or our agent to have access to your place of business, during business hours, to examine your records and take copies.

You cannot sell, buy, exchange or provide any information about a Cardholder or Transaction except:

- to us;
- to your professional advisors (eg your accountant, solicitor etc);
- to the Card Issuer; or
- when requested by law.

When the period for which you are required to keep records has expired, you must ensure that you destroy Transaction records. The documents must be destroyed in a secure manner so that any customer information including any Card number is obliterated.

15 Costs, Fees and Payments

You agree to pay the Agreed Costs when they are due or when they are debited to your Account.

You agree to pay and you agree that we can withdraw or debit without notice from your Account or any other account you have with us all the:

- Agreed Costs;
- amounts relating to refund Transactions;
- credits we make in error;
- invalid credits we paid;
- stamp duty, debits taxes, other duty, taxes and other Government charges that apply;
- amounts an audit has shown are due;
- other amounts you owe us under this Suncorp Virtual POS Contract including any indemnity;
- Chargeback amounts;
- amounts of any Invalid Transactions;
- GST in respect of any supply made under this Suncorp Virtual POS Contract;
- any other amount we are unable to collect from the Card issuer; and
- as a result of MasterCard or Visa* imposing fees, fines or penalties on us in accordance with the Rules as a direct or indirect result of your failure to observe your obligations under the Agreement including any procedures set out in the Manuals.

16 Termination

16.1 Ending the Suncorp Virtual POS Contract

- 16.1.1 You can end this Suncorp Virtual POS Contract by giving us 30 days written notice of your intention to end the Suncorp Virtual POS Contract.

- 16.1.2 We can end the Suncorp Virtual POS Contract immediately if:
- you breach any Term or Condition of this Suncorp Virtual POS Contract;
 - we are instructed to do so by any of the Card Schemes;
 - you harmfully use or cause or permit harmful use of the Software, any Documentation or the MiGS Processing Services;
 - MasterCard ceases to have the right to distribute the Software and/or the MiGS Processing Services;
 - the Software ceases to be supported; or
 - MasterCard's agreement with the Distributor for the provision of MiGS Processing Services expires or terminates for any reason;
 - an application or petition for winding up your business is presented;
 - you cannot pay your debts within the meaning of the Corporations Act;
 - any judgement made against you in court is not immediately satisfied;
 - you are bankrupt or there are bankruptcy proceedings issued against you;
 - there are material changes to your business or business practices;
 - there is a change or ending of a partnership (where applicable);
 - you make unauthorised changes to your Account;
 - we reasonably suspect you have been involved in fraudulent activity, money laundering or financing of terrorism;
 - we reasonably believe that you have breached the requirements of any legislation directly or indirectly related to your Suncorp Virtual POS Merchant Facility, a Transaction or your business;
 - you make a substantially incorrect, misleading or untrue statement in connection with this Suncorp Virtual POS Contract or a Transaction;
 - you have not processed transactions for a period of one month or longer and we cannot contact you, we will close your facility and terminate your merchant contract; or
 - you receive an excessive number of Chargeback's against your Suncorp Virtual POS Merchant Facility.
 - If you or anyone associated with the merchant facility is operating as a money remitter.
- 16.1.3 We can end the Suncorp Virtual POS Contract at our discretion if we give you 14 days notice in writing.
- 16.1.4 Rights and obligations we have, you have and other involved parties have continue on after this Suncorp Virtual POS Contract ends.
- 16.1.5 When this Suncorp Virtual POS Contract ends, you must return all decals, equipment, guides and other material we gave you.
- 16.1.6 If your settlement account was opened at the same time as your Virtual POS facility and the Virtual POS facility is declined, we will close the settlement account.

16.2 Disclosure of Termination

- 16.2.1 If the Suncorp Virtual POS Contract ends you agree we can tell any person that the Suncorp Virtual POS Contract has ended.
- 16.2.2 If you are an individual, you also agree that under Section 18N (1) (b) of the Privacy Act we can give a credit provider information that this Suncorp Virtual POS Contract has ended and why it ended.
- 16.2.3 You authorise the Bank to disclose to any Card Scheme advice of termination of the Suncorp Virtual POS Contract and the reasons for termination of the Suncorp Virtual POS Contract.

You acknowledge that the information concerning termination of the Suncorp Virtual POS Contract then becomes available to any member of the Card Scheme(s).

This information, available to any member of the Card Scheme(s), may be used in assessing subsequent applications for Merchant Facilities, and may result in the application being declined.

17 General Rights

17.1 Advertising

We will supply you with signs, decals and other advertising material relating to the Transactions you can accept under this Suncorp Virtual POS Contract.

You must:

- display the Card decal (including electronic decals for E-Commerce) supplied to you by us;
- only use advertising material supplied by us and in a way we agree to; and
- stop using this material if we ask you or if this Suncorp Virtual POS Contract ends.

You must not:

- indicate or imply that either Visa or MasterCard endorses any of your goods or services;
- refer to Visa or MasterCard in stating eligibility for your products, services or membership;
- use the supplied and agreed Card Acceptance decals for any purpose other than those permitted within these Terms and Conditions.

17.2 Default and Enforcement Expenses

You agree to pay on demand all legal fees (on a solicitor and own client basis) and liabilities incurred by us in connection with any default by you under this Suncorp Virtual POS Contract or enforcement of this Suncorp Virtual POS Contract by us.

17.3 Indemnity

- 17.3.1 You indemnify us for all losses and liabilities we face because:
- you did not keep to the terms of this Suncorp Virtual POS Contract;
 - you, your employees, contractors, agents or invitees acted dishonestly or illegally when using the Suncorp Virtual POS Merchant Facility;

- there is a dispute between you and a Cardholder over goods or services and;
- we processed a Transaction initiated by you.

17.3.2 This Indemnity continues after this Suncorp Virtual POS Contract ends.

Amounts payable under this indemnity are payable on demand.

17.3.3 We are not liable for any Invalid Transaction or losses or inconvenience you incur or those of a Cardholder or any other person if Software or communications line is faulty.

17.3.4 You are liable for Invalid Transactions or any loss arising from unauthorised use of your refund password.

17.3.5 The signing of an application for a Suncorp Virtual POS Merchant Facility by one of you (owner, partner or director) and the subsequent acceptance of this Suncorp Virtual POS Contract in accordance with clause 1.3 binds all of you jointly and severally.

17.4 Variation and Waiver

17.4.1 We can change the Terms and Conditions of your Suncorp Virtual POS Contract or make any addition to your Suncorp Virtual POS Contract by advertising such changes in a national newspaper no later than the day on which the change takes effect or by some other means authorised by law or Code of Conduct.

17.4.2 A failure or delay by us to enforce any Term or Condition in this Suncorp Virtual POS Contract does not affect any of our rights under this Suncorp Virtual POS Contract.

17.5 Your Rights and our Rights

17.5.1 You cannot transfer your rights in this Suncorp Virtual POS Contract to anyone else. We can act as a principal or agent in this Suncorp Virtual POS Contract. We can transfer our interests in this Suncorp Virtual POS Contract or give someone else an interest or form of security in them. We do not need your consent to do this.

17.5.2 The rights in this Suncorp Virtual POS Contract are in addition to any other legal rights the parties have and all these rights can be used by you and by us.

17.6 Notices

17.6.1 A notice from you must be:

- delivered in person to the address we last gave you; or
- left at the address we last gave you; or
- posted prepaid to the address we last gave you; or
- faxed to the fax number we last gave you; or
- sent by other electronic means agreed between us.

A notice from us may be:

- delivered in person to the last address given by

you; or

- left at the last address given by you; or
- posted prepaid to the last address given by you; or
- faxed to the last fax number given by you; or
- sent by other electronic means agreed between us.

17.6.2 Unless we tell you or you tell us in writing, notices are to be delivered to the last address given. When notices are posted, they are taken to be received on the third day after posting. When notices are faxed, they are taken to be received after the transmission report from the sending fax shows the whole fax was sent. When notices are sent by electronic means, they are taken to be received when the transmission has been successful.

17.7 Tax Invoice

We will give you a Tax Invoice on a monthly basis, where required under GST Law. An example statement has been provided within Suncorp Virtual POS Operating Guides.

17.8 Governing Law, Rules and Regulations

This Suncorp Virtual POS Contract is governed by the laws of Queensland.

We can at any time, by giving you reasonable notice, impose or create rules and regulations.

17.9 GST

17.9.1 All fees, costs, charges, considerations, prices and other amounts payable under this Suncorp Virtual POS Contract are quoted excluding GST.

17.9.2 Where a party (the supplier) makes a taxable supply under this Suncorp Virtual POS Contract to the other party (the receiving party), the receiving party shall pay to the supplier the GST payable on the taxable supply.

17.9.3 The supplier will provide a tax invoice where required by law.

17.10 Third Parties

You use any third party processing or bureau services at your own risk. We are not liable for any, omissions, losses, claims, damages, costs including any consequential loss resulting from the acts or omissions of any third party.

17.11 Your Information

As well as our duties under Privacy Legislation, we are also bound by a duty to keep many details of your Suncorp Virtual POS Contract confidential. In some circumstances, we can release details of your Suncorp Virtual POS Contract when:

- you agree;
- the law requires or permits us to do so;
- it protects our interests to do this;
- there is a public duty to do this.

When you apply for a Suncorp Virtual POS Merchant Facility, the application form you complete contains information on how we use the information you give us and who we can give it to, as well as information relating to privacy issues. Please read the application form carefully.

We can disclose information about termination of a Suncorp Virtual POS Contract under clause 16 of these Terms and Conditions.

18 Acceptance of Transactions by Other Persons at Premises

You must ensure that any other person who operates a Suncorp Virtual POS Merchant Facility (whether or not you authorise them to do so) acts in accordance with these Terms and Conditions. You will be liable for any act or omission of any other person who operates a Suncorp Virtual POS Merchant Facility (whether or not you authorise them to do so) and we may enforce this Suncorp Virtual POS Contract against you, as if you had performed the act or failed to perform the act yourself.

19 Code of Banking Practice

The relevant provisions of the Code of Banking Practice 2003 (including any amendments from time to time which have been published by the ABA and publicly adopted by us) apply to these terms and conditions.

20 Grant of License

The Distributor grants to the Merchant, who accepts, a personal, non-transferable (subject to Clause 25.2 of this License) and non-exclusive license to use the Software and the Documentation to connect to and use the MiGS Payment System on the Terms and Conditions of this License. This License does not include any rights to the source code of the Software.

21 No Maintenance

Notwithstanding anything in this License, neither MasterCard nor the Owner will be under any obligation to the Merchant to provide or procure the provision of any services or assistance relating to the installation of the Software, nor any maintenance, operational or product defect related support, training, or other services or assistance in relation to the Software. Neither MasterCard nor the Owner is bound by any agreement, arrangement or understanding concerning installation, maintenance, support or other services unless it is in writing and signed by that person. To the extent any such services are provided to the Merchant, such arrangements are to be direct between the Distributor and the Merchant.

22 Duration of License

The License commences on the Commencement Date and will continue until terminated in accordance with Clause 16.

23 Documentation

23.1 Documentation existence

There is no obligation on the Distributor, MasterCard or Owner to provide the Merchant with operating manuals, guides, publications or other materials in connection with the use of the Software by Merchant pursuant to this License. No representation is made about the quality, usefulness or fitness for purpose of any Documentation.

23.2 Use of Documentation

Documentation may not be copied or used by the Merchant except to assist in the normal use of the Software pursuant to the License. The Merchant is not permitted to copy or use the Documentation for any other reason whatever.

23.3 Use of Example Code

Example Code is provided to illustrate aspects of the Software. The Merchant acknowledges that the Example Code is not designed to demonstrate complete functionality of the Software, and must not be used by the Merchant for production purposes.

24 Liability

24.1 No warranty as to suitability

Subject to Clause 24.3, but without limiting Clause 24.2, the Merchant acknowledges that the Software and Documentation is supplied "as is" and that Distributor, MasterCard, the Owner and the Owner's licensors have not made, and that no person acting on behalf of the Owner, MasterCard or Distributor has made, any representation or warranty:

- as to the Software's or Documentation's quality, usefulness, suitability, merchantability or suitability for any particular purpose;
- that the Software or Documentation is error free or will operate uninterrupted;
- that the Software or Documentation will have any particular benefits for the Merchant (or for a class of persons which includes the Merchant);
- in respect of any third party software embedded in or supplied with the Software;
- that use of the Software or the Documentation will not infringe the rights of any third person, including any third party's patent rights or copyright; or
- that the Merchant will be authorised or accepted by a Financial Institution to connect or make use of the MiGS Processing Services.

The Merchant will continually ensure the suitability of its systems and communications for the operation of the

Software and the suitability of the Software for the purposes of the Merchant, including by testing the Software and its operation with non-critical data before use and by appropriate data back-up and security arrangements on an ongoing basis. Notwithstanding anything else in this License, any obligation of the Distributor as to the operation of the Software will not apply if the Merchant has failed to comply with this Clause 4.

24.2 Exclusion of terms and warranties

To the maximum extent permitted by law:

- subject to Clause 24.3, all conditions, terms and warranties expressed or implied by any legislation, the common law, equity, trade, custom or usage or otherwise in relation to the Software, Documentation, License or otherwise in connection with the Software or this License, are expressly excluded;
- neither MasterCard, Owner nor their licensors are liable in any way for any direct, indirect, incidental or consequential loss or damage, loss of revenue, loss of profit, loss of data, loss of opportunity and economic loss of any kind arising out of or in connection with the Software, the Documentation, the MiGS Processing Services or otherwise in connection with this License (including loss or damage caused by MasterCard's or the Owner's negligence), regardless of whether the loss or damage was foreseeable or either party contemplated or was advised of the possibility of such loss or damage; and
- subject to Clause 24.3, the Distributor's aggregate liability to the Merchant for direct loss and damages in connection with this License is limited to the amount paid by the Merchant to the Distributor for the grant of the rights under this License.

24.3 Statutory warranties

If any legislation implies in this License any condition, term or warranty and also prohibits or restricts the scope of provisions in a contract excluding or modifying the application of or exercise of, or liability under, that condition, term or warranty, then to the extent permitted by law the liability of the Distributor, MasterCard and the Owner is limited, at the option of the Owner, to:

- re-supplying the Software or Documentation (as the case may be); or
- the cost of re-supplying the Software or Documentation (as the case may be).

24.4 Indemnity by Merchant

The Merchant agrees to release, hold harmless and indemnify the Distributor, MasterCard and the Owner to the maximum extent permitted by law from and against any liability whatever (including loss of profits, loss of revenue, loss of data, loss of opportunity, all forms of economic loss, negligence and tax) however arising in connection with its use, misuse or harmful use of the Software, the Documentation (whether or not that use is in accordance with this License) or the MiGS Processing Services.

24.5 Security

- 24.5.1 At any time We may request that You provide Us with Security of a type, and to secure an amount specified by us and You must provide the Security to Us at that time

24.6 Benefit of License to Owner and MasterCard

The Owner and MasterCard are not parties to this License nor a supplier to the Merchant of the Software or any other goods or services under this License. The Merchant agrees not to make any claim directly against the Owner and/or MasterCard, in contract, tort (including for any negligence of the Owner and/or MasterCard) or otherwise. Nothing in this Clause 24.5: (a) affects an obligation or liability of the Distributor under or in relation to this License; or (b) prevents the Owner or MasterCard from receiving or enforcing the benefit of a provision of this License which is intended to benefit the Owner or MasterCard as applicable.

25 Use of Software

25.1 Normal operating procedures

The Merchant must:

- use the Software in accordance with the Documentation;
- only use the Software for its own internal requirements at the Site; and
- not use the Software to process the data of any other person.

In particular, without limiting the foregoing, the Merchant must not represent, permit, or allow any other person to utilise the Software in the operation of its business.

25.2 No copying or reproduction

Subject to Clause 25.3 and the paragraph below, the Merchant must not, and must not permit or otherwise allow a third person to, copy or otherwise reproduce or to use, distribute, lease, rent, loan, sell, mortgage, grant a sub-license of, transfer or reproduce the Software or Documentation. For the avoidance of doubt, the Merchant may copy or use the Documentation to assist the Merchant in the normal use of the Software pursuant to Clause 7.1.

The Merchant may sublicense any third party hosted services provider, application service provider or outsourced services provider engaged to provide services to the Merchant, to exercise the rights granted to the Merchant under this License. The Merchant must ensure that any such third party provider in exercising the rights under this License complies with the terms of this License as if it were the Merchant.

25.3 Copying permissible for data backup or testing

Notwithstanding Clause 25.2, a Merchant may copy the Software for the sole purpose of creating a single copy of the Software for the sole purpose of creating a copy for back-up or disaster recovery purposes or as permitted by a provision of the law that may not lawfully be excluded.

25.4 No Harmful Use or unreasonable interference

The Merchant must not harmfully use, cause or permit harmful use of, or use the Software in a way that creates an unreasonable or unwarranted interference with the business operations of MiGS Processing Services.

25.5 Use only at Site

The Merchant may only use, or permit to be used, the Software at the Site and may not, without prior written permission from MasterCard and Owner, use the Software at any other physical location or upon any other computer network or permit access to the Software on more than one network at any one time.

25.6 Relief

A breach of this Clause 25, without limiting any other rights of the Distributor, MasterCard or Owner, will result in the automatic termination of the License (without the need for notice to be given) and entitle Distributor to equitable relief against the Merchant, including injunctive relief.

26 Rights in the Software

26.1 Rights in the Software

All rights (including copyright) in the Software, the Software and the Documentation are and remain owned by MasterCard or the Owner as applicable. The Merchant must not use any part of the Software or any part of the Documentation except as expressly authorised by this License.

26.2 Marks of ownership

The Merchant must not alter or remove any mark of ownership, copyright, patent, trade mark or other property right which is embodied in or associated with the Software, the Documentation or any physical material on which the Software or the Documentation is stored when supplied to the Merchant.

26.3 Termination

On expiration or termination of the License for any reason, the Merchant will lose all rights under this License, must immediately and securely destroy or return the Software and Documentation and all copies thereof supplied under this License. The Merchant must procure one of its officers to certify by statutory declaration that all copies of the Software and Documentation have been destroyed or returned as required under this Clause 26.3.

27 Modifications and reverse engineering

27.1 No modification

The Merchant may not modify the Software or the Documentation or merge all or any part of the Software with other programs without MasterCard and the Owner's written permission.

27.2 No reverse engineering

Except to the extent expressly permitted by law, the Merchant must not reverse disassemble, decompile or reverse engineer, or directly or indirectly allow or cause a third party to disassemble, decompile or reverse engineer the whole or any part of the Software or any locking or security device used or supplied with the Software or otherwise attempt or allow any other party to attempt to obtain the algorithms by which the Software performs functions.

27.3 No Export

The Merchant must not, and may not permit a third party to, export, re-export or otherwise transfer the Software outside the country where the Site is located or to any US sanctioned or embargoed nation or person. The Merchant understands and agrees that the Software may be subject to US export control laws and regulations and may be subject to export or import regulations in other countries (including control on encryption products).

27.4 Encryption

The Merchant understands and agrees that the Software may contain third party encryption software governed by the respective license terms and conditions of use supplied with that third party software.

28 Confidentiality

28.1 Confidentiality

All information belonging to, included in, or forming part of the Software (including object code, source code or other computer programming or commands, as well as any information contained in the Documentation relating to the Software or its use) (Confidential Information) is strictly confidential to MasterCard and the Owner.

28.2 No Disclosure

Subject to the following paragraph of this Clause 10.2, the Merchant is not entitled to disclose any Confidential Information to any third person or allow any third person to have access to any Confidential Information without the written consent of MasterCard and the Owner. The Merchant shall use Confidential Information solely in connection with its use of the Software as permitted by this License. For the avoidance of doubt, a reference in this Clause to a third person includes a reference to a Related Body Corporate of the Merchant.

The Merchant may disclose Documentation and access credentials that form part of the Confidential Information to third party service providers as necessary for the acquisition of hosting or integration services from such service providers, provided the Merchant ensures that each such person to whom such disclosure is made:

- is informed of the confidentiality of the information and the obligations of confidentiality under this License; and
- complies with any intellectual property, confidentiality and security obligations imposed on the Merchant in respect of such Documentation and access credentials as applicable.

28.3 Return on Termination

Notwithstanding anything else in this License, the Merchant must promptly return any Confidential Information (including any article containing Confidential Information) upon termination of this License.

29 Assignment

MasterCard and the Owner may assign their respective legal and/or beneficial interest in this License to a third party at any time without notice to the Merchant and without consent, in which case Merchant shall continue to be bound by the Terms in this License in favour of any assignee of MasterCard and/or the Owner and MasterCard and/or the Owner as applicable is hereby released from all liability or obligation pursuant to this License. The Distributor may assign all its legal and/or beneficial interest in this License to MasterCard at any time without notice to the Merchant and without the consent of the Merchant, in which case the Merchant shall continue to be bound by the Terms of this License in favour of MasterCard and the Owner.

30 General Provisions

30.1 Entire agreement

This License contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

30.2 Amendment

No amendment or variation of this License is valid or binding on a party unless: (i) made with the prior written consent of MasterCard and the Owner; and (ii) made in writing executed by all parties and a copy provided to MasterCard and the Owner.

30.3 Severability of provisions

Any provision of this License which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this License nor affect the validity or enforceability of that provision in any other jurisdiction.

30.4 No waiver

No failure to exercise, nor any delay in exercising, any right, power or remedy by a party, MasterCard or the Owner operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver or on MasterCard or the Owner unless made in writing.

30.5 Further assurances

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this License and the Transactions contemplated by it.

30.6 Survival

The provisions of this License will endure for the benefit of and be binding on the parties and their respective successors and permitted substitutes and assigns and (where applicable) legal personal representatives. For the avoidance of doubt, the provisions of Clauses 24.1-24.5 will survive any termination of this Agreement.

30.7 Governing law and jurisdiction

This License is governed by the laws of New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this License.

30.8 Force Majeure

Notwithstanding any provision herein to the contrary, no party shall be liable to the other and any party for loss, injury, delay or damages suffered or incurred by any such other party in performance of their respective obligations herein resulting from acts or occurrences beyond their reasonable control due to acts of God, strikes, labour disturbances, lockouts, material shortages, riots, acts of war, governmental regulations, fire, earthquakes, flood, lightning strike and other natural disasters. The obligations of both parties, as far as affected by such acts or occurrences, shall be suspended during the continuance of any delay or failure in performance so caused, and such delay or failure shall not be a breach of this Agreement.

How to contact us



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