



# Retailer Agreement

OFFICE USE ONLY\*

\*Enter your CD Ref Number here -OR- Contact us to obtain one.

Date Received	CD Ref Number
Retailer Account Number <input type="text"/>	Terminal ID <input type="text"/>

## DEFINE YOUR epay AGREEMENT

### Section A - You are:

- New to epay
  - Taking over an existing epay contract (**Change of Owner**) - please fill out all sections including section G
- \* Note you are required to complete further information in section section G

### Section B - What type of service do you require?

- epay Terminal
- Futurenet
- Tower / EziPass
- POS Solutions
- World Smart Retch
- Scanning Systems Australia
- Other (Please specify).....

## ✓ CHECK LIST

It is essential that this Agreement is completed fully and accurately, in order for your application to be processed as quickly as possible.

Please read this document thoroughly. Make sure that you understand the terms and conditions within. If you have any questions, contact your account manager.

This Agreement must be completed with a **BLACK pen in CAPITAL LETTERS**. Please ensure the following points are completed.

- The proprietor or director must SIGN the Retailer Agreement and PRINT your name clearly in the space provided. A witness is also required to sign.
- Complete all required fields on Page 2.
- Complete Direct Debit Page 4.
- Attach a copy of the proprietors or directors DRIVERS LICENCE or other approved Photo ID.
- Complete Billing & Nominated Stores Schedule 1
- Please provide an email address on Page 2

## NEED ASSISTANCE?

For assistance with the completion of this document please contact the sales department on 02 8297 2888. To help us process your application as quickly as possible, please ensure you have provided all required information.

**You can return the completed pages by**  
**Fax** (02) 8117 9867  
**Email** [signup@epayaust.com.au](mailto:signup@epayaust.com.au)  
**Post** epay Australia PO Box 1383 Queen Victoria Building, Sydney, NSW 2000.



# Retailer Agreement

This document constitutes an agreement between epay Australia Pty Limited ("epay") ABN 71 093 566 057 of Level 1, 75 Castlereagh St Sydney, New South Wales and ("the Retailer") named below for the supply of Electronic Recharge Services. This Agreement consists of this page together with the attached Terms and Conditions, Schedule 1 and Schedule 2.

## Section C - Business and Personal Information

Do you operate your business as a:

- SOLE TRADER   
  COMPANY   
  TRUSTEE  
 PARTNERSHIP   
  OTHER .....

Are you part of a buying group?

- YES (who) .....  NO  
 (If YES, please provide supportive documentation)

Type of Business

(e.g. Petrol Station)

Company Name

ABN

Trading Name

Physical Address

(of Retail Outlet)

Street

Suburb

State

Postcode

Postal Address

(if different)

Street

Suburb

State

Postcode

E-mail Address

(This e-mail will be also used to deliver invoices)

Mobile Number

Retailer's Telephone Number

( )

Fax Number

( )

## Section D - Required information ONLY if you are a Sole Trader, Partnership or Other Non Company Entity

Name & Surname

(owner/proprietor)

Drivers Licence No

Date of Birth

| / | / |

Retailer's Address

Street

Suburb

State

Postcode

## Section E - Owner/proprietor or Director's

## Section E - Witness

Name

Name

Signature

Signature

Date

| / | / |

Date

| / | / |

## epay OFFICE USE ONLY

epay Authorised Personnel	epay Credit Manager
Name	Name
Signature	Signature
Date	Date



# Retailer Agreement

## Section F - Please list ALL authorised locations for each terminal.

If you have more than four outlets please attach a separate sheet.

### Store Location 1 Retailer's Address

Contact Person \_\_\_\_\_

Street \_\_\_\_\_

Suburb \_\_\_\_\_ State \_\_\_\_\_ Postcode \_\_\_\_\_

**Retailer's Telephone Number** ( ) | | | | | | | | | | | | | | | | | | | | | **Fax Number** ( ) | | | | | | | | | | | | | | | | | | | | |

### Store Location 2 Retailer's Address

Contact Person \_\_\_\_\_

Street \_\_\_\_\_

Suburb \_\_\_\_\_ State \_\_\_\_\_ Postcode \_\_\_\_\_

**Retailer's Telephone Number** ( ) | | | | | | | | | | | | | | | | | | | | | **Fax Number** ( ) | | | | | | | | | | | | | | | | | | | | |

### Store Location 3 Retailer's Address

Contact Person \_\_\_\_\_

Street \_\_\_\_\_

Suburb \_\_\_\_\_ State \_\_\_\_\_ Postcode \_\_\_\_\_

**Retailer's Telephone Number** ( ) | | | | | | | | | | | | | | | | | | | | | **Fax Number** ( ) | | | | | | | | | | | | | | | | | | | | |

### Store Location 4 Retailer's Address

Contact Person \_\_\_\_\_

Street \_\_\_\_\_

Suburb \_\_\_\_\_ State \_\_\_\_\_ Postcode \_\_\_\_\_

**Retailer's Telephone Number** ( ) | | | | | | | | | | | | | | | | | | | | | **Fax Number** ( ) | | | | | | | | | | | | | | | | | | | | |

## Section G - Change of ownership

**If you are completing an application because you are taking over an existing business**

1. Existing epay account number .....
2. Date & time you are taking over the business .....



# Retailer Agreement

## Section H - Direct debit request AUTHORITY

I/We request, epay Australia Pty Ltd (User ID 186979) to arrange for funds to be debited from my/our nominated account at the financial institution shown below according to schedule 2 in the Retailer Agreement held with epay Australia Pty Ltd. Please refer to the Customer DDR Service Agreement on the following page.

<b>Retailer's Address</b>	Street		
Suburb	State	Postcode	
<b>Name of Bank Account</b> <small>(eg: Smith &amp; Co Pty Ltd)</small>			
<b>Name of Financial Institution</b> <small>(eg: ANZ)</small>			
<b>Branch (eg. Cnr Market &amp; Clarence)</b>			
<b>Bank Account Name</b> <small>(Name that appears on your statement)</small>			
<b>BSB No.</b>			
<b>Account Number</b> <small>(9 digits maximum)</small>			
<b>Name</b> <small>(Of authorised signatory)</small>	<b>Name</b> <small>(Of authorised signatory)</small>		
<b>Signature</b>	<b>Signature</b>		
<b>Date</b>		/	



# Retailer Agreement

## CUSTOMER DDR SERVICE AGREEMENT

### OUR COMMITMENT TO YOU

This document outlines our service commitment to you, in respect of the Direct Debit Request (DDR) arrangements made between epay Australia Pty Ltd and you. It sets out your rights, our commitment to you and your responsibilities to us together with where you should go for assistance.

### INITIAL TERMS OF THE ARRANGEMENT

In terms of the Direct Debit Request arrangements made between us and signed by you, we undertake to periodically debit your nominated account for the agreed amount for sales of pre-paid products via the epay terminal as prescribed in the retailer agreement.

### DRAWING ARRANGEMENTS

- The first drawing under this Direct Debit arrangement will occur within 7 days of commencement of use of the epay terminal.
- If any drawing falls due on a non-business day, it will be debited to your account on the following business day of the scheduled drawing date.
- We will give you at least 7 days notice in writing when changes to the initial terms of the arrangement are made. This notice will state [may include the new amount, frequency, next drawing date] and any other changes to the initial terms.
- If you wish to discuss changes to the initial terms, please phone the Credit department on 02 8297 2800 or email [finance@epayaust.com.au](mailto:finance@epayaust.com.au)

## YOUR RIGHTS

### CHANGES TO THE ARRANGEMENT

If you want to make changes to the drawing arrangements, please phone the Finance department on 02 8297 2800. These changes may include:

- Deferring the drawing; or
- Altering the schedule; or
- Stopping an individual debit; or
- Suspending the DDR; or
- Cancelling the DDR completely.

### ENQUIRIES

Direct all enquiries to us, rather than to your financial institution, and these should be made at least 14 days prior to the next scheduled drawing date. All communication addressed to us should include your Trading Name, Retailer ID and Terminal ID.

All personal customer information held by us will be kept confidential except that information provided to our financial institution to initiate the drawing to your nominated account.

### DISPUTES

- If you believe that a drawing has been initiated incorrectly, we encourage you to take the matter up directly with us by contacting our Finance department on 02 8297 2800 during business hours.
- If you do not receive a satisfactory response from us to your dispute, contact your financial institution who will respond to you with an answer to your claim.
- You will receive a refund of the drawing amount if we can not substantiate the reason for the drawing.

Note: Your financial institution will ask you to contact us to resolve your disputed drawing prior to involving them.

### YOUR COMMITMENT TO US

It is your responsibility to ensure that:

- Your nominated account can accept direct debits (your financial institution can confirm this); and
- That on the drawing date there is sufficient cleared funds in the nominated account; and
- That you will advise us if the nominated account is transferred or closed.
- The person(s) signing the DDR form is authorised to do so
- If your drawing is returned or dishonoured by your financial institution, epay will take action as contained in the Retailer Agreement.



# Retailer Agreement

## SCHEDULE 1 - PRODUCT SCHEDULE

eziPass (EPOS)

Products marked with (CP) after the margin column are Collection Products

### Prepaid Mobile

PRODUCT	SUPPLIER	MARGIN
Optus Mobile	Optus	5.00%
Virgin	Virgin	7.00%
Vodafone Voucher	Vodafone	5.00%
Telstra Pre-Paid	Telstra	4.00%
Boost	Optus	5.00%
3 G PrePaid Mobile	Hutchison 3G Australia	5.00%
Dodo Pre-Paid Mobile	Dodo	15.00%
JUST Prepaid Mobile	CommodiTel	10.00%
gotalk Recharge	CardCall	8.00%
Crazy Johns Mobile Topup Card	Crazy Johns	8.00%
amichi prepaid	CommodiTel	10.00%
GRLmobile	GRL Mobile	8.00%
Savvytel	Savvytel	7.00%
Lebara Mobile	Lebara Australia Ltd	7.00%
Tel Pacific Hello Mobile	Tel Pacific	10.00%
United Wholesale - Global Gossip	United Wholesale	5.00%
RevTel Recharge	CommodiTel	10.00%
Lycamobile	Lycamobile	6.00%
GT Mobile	Lycamobile	6.00%
Amaysim	Compass	5.00%
gotalk Mobile Recharge Card (Swipe)	CardCall	8.00%

### Calling Cards

PRODUCT	SUPPLIER	MARGIN
G0talk	CardCall	13.00%
OZcall Phonocard Provider	CardCall	18.00%
RateSaver Phonocard	CardCall	18.00%
Its Green	CardCall	18.00%
SuperSaver	CardCall	18.00%
Telstra PhoneAway	Telstra	16.00%
CardCall SayG'Day	CardCall	18.00%
CardCall Go Bananas	CardCall	18.00%
CardCall Minute Max	CardCall	18.00%
CardCall Phone Me	CardCall	18.00%
CardCall Stealth	CardCall	18.00%
Day Break Calling Card	CardCall	18.00%
CardCall Super Buzz	CardCall	18.00%
CardCall Bubble	CardCall	18.00%
CardCall Pay Peanuts	CardCall	18.00%
Oasis	CardCall	18.00%
Cardcall Happy Calling	CardCall	18.00%
Tel Pacific GPS	Tel Pacific	22.50%
Tel Pacific Hello	Tel Pacific	22.50%
Tel Pacific Joy	Tel Pacific	22.50%
Pre-Paid Services Anytime	Pre-Paid Services	23.00%
Pre-Paid Services Genie	Pre-Paid Services	23.00%
Pre-Paid Services Lucky Dragon	Pre-Paid Services	23.00%
Pre-Paid Services Wicket	Pre-Paid Services	23.00%
Cardcall Talk Tomato	CardCall	18.00%
Dodo Calling Card	Dodo	25.00%
Cardcall Shout	CardCall	18.00%
CardCall Hot Phonocard	CardCall	18.00%
Aussie Phonocard	Access International Group	27.00%
Pre-Paid Services Lotus Calling Card	Pre-Paid Services	23.00%
CardCall Korero Mai	CardCall	18.00%

epay Australia Pty Ltd - Retailer Agreement - Schedule 1 - Product Schedule - v100715 - eziPass (EPOS) - 19 August 2010



# Retailer Agreement

## SCHEDULE 1 - PRODUCT SCHEDULE

eziPass (EPOS)

Products marked with (CP) after the margin column are Collection Products

### Calling Cards

PRODUCT	SUPPLIER	MARGIN
PPS Optus Long Distance Calling Card	Pre-Paid Services	23.00%
Pre-Paid Services Globe Kabayan	Pre-Paid Services	23.00%
Pre-Paid Services Walkabout	Pre-Paid Services	23.00%
Cardcall Australian Telecom Calling Card	CardCall	25.00%
Cardcall InTouch Phonecard	CardCall	18.00%
Tel Pacific Crystal	Tel Pacific	22.50%
Lycataalk	Lycamobile	6.00%
Pre-Paid Services Globe Kabayan (Swipe)	Pre-Paid Services	25.00%
Pre-Paid Services Walkabout (Swipe)	Pre-Paid Services	25.00%

### Internet & Content

PRODUCT	SUPPLIER	MARGIN
OptusNet Pre-Paid	Optus	20.00%
Primus Telecom Internet	Primus Telecom	20.00%
Dodo Internet	Dodo	25.00%
Telstra BigPond Games	Telstra	10.00%
Telstra BigPond Movie Downloads	Telstra	10.00%
Telstra BigPond Tones & Pic's	Telstra	10.00%
3 Mobile Broadband Vouchers	Hutchison 3G Australia	5.00%
Dodo Pre-paid Mobile Wireless Broadband	Dodo	12.00%
Optus 1 Month Service Packs	Optus	35.00%
Vodafone Prepaid Mobile Broadband	Vodafone	5.00%
Telstra BigPond Sport	Telstra	10.00%

### Music

PRODUCT	SUPPLIER	MARGIN
Telstra BigPond Music	Telstra	8.00%

### Gift Cards

PRODUCT	SUPPLIER	MARGIN
iTunes Gift Card	iTunes Music Card	6.00%

### Other

PRODUCT	SUPPLIER	MARGIN
Ukash Voucher	Ukash	2.00%
Cherry Credits	Cherry Credits	8.00%



# Retailer Agreement

## SCHEDULE 2 - TERM, FEES, PAYMENT TERMS

### TERM

Initial Term continued thereafter for the Renewal Term unless either party provides the other party with sixty (60) days written notice (which may be given at any time but the Agreement may not expire earlier than the said Initial Term) subject to relevant terms for earlier termination contained herein.

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<b>Initial Term</b>	NIL
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<b>Renewal Term</b>	NIL
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The parties agree that following the expiration of the Renewal Term, the Agreement shall continue thereafter until either party provides the other party with ninety (90) days written notice (which may be given at any time but the Agreement may not expire earlier than the said Renewal Term) subject to relevant terms for earlier termination contained herein.

### MINIMUM SALES REQUIREMENT

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<b>Minimum Sales Requirement</b>	NIL
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### FEES

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<b>Set-Up Fee</b>	NIL
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<b>Service Fee</b>	NIL
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<b>Terminal Rental Fee</b>	NIL
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<b>Early Termination Fee</b>	NIL
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### PAYMENT TERMS

Payment Period and Payment Dates for Products: epay will invoice the retailer on a weekly basis. Unless otherwise notified for a Product, Sales accrued Monday to Wednesday will be debited on Friday the same week. Sales accrued Thursday to Sunday will be debited the following Tuesday.

epay shall invoice the Retailer for the payment of the Fees (if any) listed above and which are due to epay. The Retailer shall pay such Fees by direct debit in the Retailer's standard direct debit cycle.





# Retailer Agreement

## epay AUSTRALIA RETAILER AGREEMENT Terms & Conditions

### WHEREAS:

- A. epay acts as an agent of the Providers for the sale of Products.
- B. epay wishes to provide the Retailer with the Services set forth in this Agreement to enable the Retailer to Sell Products to Customers and the Retailer wishes to obtain such services from epay.
- C. epay has agreed to provide the Retailer with Equipment or other means of facilitating the sale of the Products in accordance with the terms of this Agreement.

### 1 INTERPRETATION

#### 1.1 Definitions

In this Agreement:

**'Agreement'** means this Retailer Agreement between epay and the Retailer.

**'Approved Point Of Sale Device'** means either a Terminal or other Point Of Sale System approved by epay in writing to process Transactions.

**'Business Day'** means any day which is not a Saturday, Sunday or public holiday in New South Wales.

**'Cause of Action'** means a cause of action arising for breach of contract, in tort (including negligence), under any statute or under any other legal rule or concept.

**'Collection Product'** means a Product specified as a Collection Product in Schedule 1.

**'Commencement Date'** means the date that this Agreement is signed by both parties.

**'Commission Rate'** means the rate of commission payable to Retailers on sales of Products for each of the Providers set out in this Agreement, expressed as a percentage of the GST exclusive retail price/Face Value, or a fixed fee amount per Transaction, or as otherwise indicated.

**'Confidential Information'** means the terms of this Agreement, any information, documentation, materials or items designated as confidential by either party and any trade secret, manufacturing process, formulae or any information relating to the current or future business affairs, customer and supplier lists, sales, marketing and business plans, records, methodology, processes or practices of either party, including without limitation:

- (a) all of the Retailer's Intellectual Property Rights and know how; and
- (b) any of the Retailer's sales data generated by the Terminal or Point Of Sale System.

**'Credit Limit'** means the credit limit offered by epay to Retailer in its sole discretion.

**'Customer'** means any person who purchases or has purchased or requests or has requested to purchase a Product or makes any inquiry concerning Products.

**'Early Termination Fee'** means the amount described in Schedule 2.

**'epay API Software'** means software provided by epay and installed by the Retailer on its own systems that facilitates the communication between a Point Of Sale System and the Host System.

**'epay Logos'** mean any logos or marks used in connection with the sale of Products owned by epay.

**'Equipment'** means all Terminals, point of sale and materials and any other equipment, including but not limited to accessories such as power cord, telephone cord and splitters supplied by epay to the Retailer from time to time.

**'Face Value'** means the amount charged to a Customer for a Product.

**'Host System'** means the computer hardware system and associated software situated at epay's head office which is used by epay for processing Transactions.

**'Intellectual Property Rights'** means all rights, titles and interests

wherever subsisting throughout the world and whether registered or not in and to:

- (a) copyright, author's rights, neighbouring rights, rights for the protection of contents of databases, the protection of circuit layouts and rights of topography, designs;
- (b) inventions, patents, utility models;
- (c) trademarks, business names, trading styles and get up;
- (d) any right contemplated by a treaty, convention or instrument administered by or under the auspices of the World Intellectual Property Organisation; and
- (e) includes the right to apply for the registration, grant or other insurance of such rights, titles and interests.

**'Materials'** means any signage, posters or advertising or other materials provided by epay to the Retailer during the term of this Agreement.

**'Nominated Stores'** means the address or addresses of the location(s) at which the Retailer is authorised by epay to Sell the Products as set out in the front pages of this Agreement and such other location(s) as epay may from time to time approve in writing for the sale of Products.

**'Normal Business Hours'** means the usual business hours of the Retailer.

**'Paper Stock'** means rolls of paper (as supplied by epay to the Retailer) to be used in a Terminal.

**'Point of Sale System'** means the Retailer's own point of sale system through which the sale of Products is to be processed.

**'Point of Sale System Provider'** means the vendor providing and maintaining the Retailer's Point of Sale System.

**'Product'** means a product or service specified in Schedule 1 and updated from time to time.

**'Product Schedule'** means a schedule in the form of Schedule 1 which specifies the Products the Retailer is authorised to Sell.

**'Provider'** means a provider of Products as specified in Schedule 1.

**'Provider Agreements'** means the agreements between epay and each of the Providers which corresponds to this Agreement.

**'Provider Logo'** means any logos or marks owned by a Provider and used by it in connection with its respective business.

**'Receipt'** means a receipt for a Product confirming payment for a Product sold to a consumer.

**'Representative'** means any officer, employee, agent, supplier or Subcontractor of a party but in the case of the Retailer, does not include epay or a Subcontractor of epay.

**'Sell/Selling'** means to conclude the sale of the Product on behalf of the Provider.

**'Services'** means the provision of Products to Customers via an Approved Point of Sale Device or any other method or system, as the case may be.

**'Supported Communication Method'** means a telecommunication method supported by epay for a Terminal to communicate with the Host System.

**'Term'** means the term specified in Schedule 2 unless terminated earlier in accordance with the relevant terms of the Agreement.

**'Terminal'** means a device supplied by epay which allows Vouchers to be printed and Transactions to be initiated.

**'Terminal Daily Credit Limit'** means the total Face Value of Transactions which can be processed by a Terminal in a day.

**'Transaction'** means an electronic instruction by the Retailer to epay to either:

- (a) arrange for an electronic code for a Product to be issued to a Customer; or
- (b) subject to the Provider having the appropriate infrastructure, arrange for a Customer's account for that Product to be credited in real time; or



# Retailer Agreement

## epay AUSTRALIA RETAILER AGREEMENT Terms & Conditions

(c) subject to the Provider having the appropriate infrastructure, arrange for a Product to be activated in real time.

**'Voucher'** means a voucher issued by an Approved Point of Sale Device which contains confirmation that a Transaction has been processed and which may, for some Products, include an electronic code.

### 1.2 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.
- (g) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day.

### 1.3 Headings

Headings do not affect the interpretation of this document.

## 2 AUTHORISATION, AGENCY AND SCOPE OF THIS AGREEMENT

2.1 epay authorises the Retailer and the Retailer agrees to Sell Products to Customers only at the Nominated Stores in accordance with the provisions of this Agreement.

2.2 Pursuant to the right granted to epay to appoint sub-agents by applicable Providers:

- (a) epay on behalf of the Provider appoints the Retailer as a non-exclusive sub-agent for the purpose of concluding sales of applicable Products with Customers on behalf of the relevant Provider ("**Agency**");
- (b) the Retailer may conclude sales of Products upon receipt of the relevant payment by the Customer; and
- (c) the Retailer shall be entitled to receive as commission the Commission Rate on sales of applicable Products in respect of which the Retailer has received the relevant payment by the Customer in accordance with clause 7.1.

2.2 The Retailer shall not act (or fail to act) in any way which adversely affects, or is reasonably likely to adversely affect, the reputation of epay or any of the Providers.

## 3 COMMENCEMENT AND TERM

3.1 This Agreement commences on the Commencement Date and continues for the Term specified in Schedule 2 unless terminated earlier in accordance with the relevant terms of the Agreement.

## 4 SALE OF PRODUCTS

### 4.1 Nominated Stores

- (a) The Retailer shall only Sell Products at Nominated Stores.
- (b) The Retailer shall not Sell Products at a Nominated Store via a Terminal until the Nominated Store has a fully operational power line to which the Terminal is connected and the Terminal is able to communicate to the Host System via a Supported Communication

Method.

(c) The Retailer shall use reasonable endeavours to notify epay in writing at least 30 days (and, in any event, not less than 10 Business Days) before any additions or deletions to the list of Nominated Stores specified in the front cover pages of this Agreement.

### 4.2 Sale of Products

- (a) The sale of all Products by the Retailer shall be subject to and in accordance with the terms and conditions of this Agreement.
- (b) If the Retailer accepts payment for any Products by way of charge card, credit card, debit card or cheque, the risk of any loss arising by way of dishonoured payment or otherwise will be borne by the Retailer.

### 4.3 Retailer Obligations

- (a) The Retailer must actively offer for sale, display, Sell and promote the sale of all Products which the Retailer is authorised to Sell.
- (b) The Retailer must not make the sale of any Products conditional upon the sale of any other goods or services nor impose or seek to impose any terms or conditions in relation to such sale other than those set out in the terms and conditions of the applicable Provider.
- (c) The Retailer must make Products conveniently and readily available to the public during the Retailer's Normal Business Hours and shall operate the Equipment and the Point of Sale System throughout its Normal Business Hours except where the Equipment and the Point of Sale System is not operational beyond the control of the Retailer.
- (d) The Retailer must not Sell "commercial quantities" of Products. It will be in epay's sole discretion to determine what constitutes "commercial quantities" hereunder.
- (e) The Retailer shall provide a Receipt to a consumer following the sale of any Products.

## 5 EPAY OBLIGATIONS

5.1 epay will, at its own cost:

- (a) provide all initial and on-going phone based training in the use of the Equipment to the Retailer.
- (b) provide and maintain, for the duration of this Agreement
  - (i) a Customer Service Centre, to assist with any training, customer service or ongoing support issues; and
  - (ii) a Customer Service help line telephone number connected to the Customer Service Centre for the use of the Retailer in relation to this Agreement.
- (c) epay will meet all costs and charges relating to the use of the Customer Service help line except for any local telephone connection charges, which will be borne by the Retailer.

## 6 NEW PRODUCTS

6.1 From time to time epay may offer the Retailer the opportunity to Sell Products that have not been specified in Schedule 1 ("**Offer**"). If epay provides the Retailer with an Offer, the Offer will be considered as accepted upon sale of those products by the Retailer.

## 7 COMMISSION, COMMISSION RATE AND PAYMENT TERMS

7.1 The Retailer shall be entitled to receive commission at the Commission Rate on the sales of Products except in respect of those Products which are cancelled pursuant to clause 10.

7.2 Where the Commission Rate for a Product is determined by the Provider, epay may amend the Commission Rate or payment terms as those terms are amended by that Provider, by providing written notice to the Retailer. This notice is to take effect at a time which is determined by the Provider.

7.3 Where the Commission Rate for a Product is determined by epay, epay may amend the Commission Rate or payment terms by providing 14 days written notice to the Retailer.

## 8 SALE OF OTHER PRODUCTS

8.1 Where the Retailer is authorised by epay to Sell other epay Products the Retailer shall comply with all reasonable instructions and directions issued by epay from time to time governing the sale of such



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## epay AUSTRALIA RETAILER AGREEMENT Terms & Conditions

products.

8.2 During the term of this Agreement, the Retailer shall not purchase, Sell, supply or otherwise deal in Products or other electronic products offered by the Providers in co-operation directly with any other party without the prior written consent of epay. Notwithstanding the previous sentence, nothing contained in this Agreement shall prevent the Retailer from Selling Products through any means other than through Transactions via a terminal or Point of Sale System or other electronic means; provided that such services do not contain any reference to epay or any logo, mark or device which might be confused with the logos or any Intellectual Property Rights of epay without the prior written consent of epay.

8.3 For the avoidance of doubt this Agreement is an exclusive contract for the provision of the Services detailed herein and the Retailer agrees not to enter into any agreement with any other party for the sale of Products or the supply of electronic transaction services similar to the Services.

### 9 TERMINATION OF PRODUCTS

9.1 epay may immediately suspend or terminate any Product listed in Schedule 1 at any time upon notice to the Retailer.

### 10 CANCELLATION OF PRODUCTS

#### 10.1 Refund of Products

Subject to clause 10.4, if as a result of malfunction of any Approved Point of Sale Device a Transaction is improperly processed such that it is incapable of being used to access a Product then epay shall, subject to such further procedures as epay may from time to time reasonably require in order to satisfy itself as to the validity and genuineness of such cancellation and the bona fides of the Retailer and its employees and of the claim, accept cancellation and immediately refund to the Retailer the price of the cancelled Product.

#### 10.2 Operator Error

Subject to clause 10.1, if as a result of operator error a Transaction is processed which is not in accordance with the specified requirements of a Customer and the Customer is unwilling to accept the Product, epay shall accept cancellation of the Transaction in question in accordance with the process set out in clause 10.1.

#### 10.3 Reversal of Credit and Re-invoice

If epay accepts a Transaction cancellation request and refunds a Product pursuant to clauses 10.1 and 10.2 and epay is then advised by the relevant Provider that it has been used to credit a Product, epay shall immediately be entitled to reverse any credit raised in connection with such Transaction and re-invoice the Retailer in respect of such Transaction.

#### 10.4 Provider Reciprocation

epay will only accept a cancellation or refund if the business rules of the relevant Provider permit it, and if such Provider provides a reciprocal cancellation or refund to epay.

### 11 ADVERTISING AND POINT OF SALE MATERIAL

11.1 The Retailer shall display at the Nominated Store such promotional or other material (including terms and conditions and sale price information) as epay may from time to time reasonably require which, without prejudice to the generality of the foregoing, may include such copies (for inspection or delivery to customers on request) of the terms and conditions of issue of any Products as may be imposed by any of the Providers.

11.2 The Retailer shall be responsible for obtaining planning permission and such other consents or approvals as may be necessary in respect of any point of sale display or signage erected or displayed at each Nominated Store, and the Retailer shall indemnify and keep indemnified epay against failure to obtain planning permission or such other consents or approvals.

11.3 epay and Providers shall be entitled to advertise that the Retailer sells Products and use the Retailer's name and details of the Nominated Stores in promotional materials relating to a Product.

### 12 EQUIPMENT

#### 12.1 Title

Title to all Equipment remains with epay at all times.

#### 12.2 Risk

(a) Except as provided in clause 12.2(b), risk in Equipment passes to the Retailer once the Equipment has been installed at a Nominated Store.

(b) If any Equipment is stolen the Retailer shall be liable for the cost of replacement of any stolen Equipment, together with the cost of any Terminal Daily Credit Limit remaining on any Terminal at the time it is stolen which is fraudulently used to initiate Transactions unless the Retailer, once the theft becomes apparent to the Retailer, immediately notifies epay of the theft.

(c) If any Equipment is not returned to epay as requested by epay, the Retailer shall be liable for the cost of the relevant Equipment.

#### 12.3 Retailer Obligations

The Retailer shall:

(a) not part with possession of any of the Equipment;

(b) take proper care of the Equipment and keep the same in good condition;

(c) keep the Terminal connected at all times to a telecommunication service as required for the Supported Communication Method for the Terminal;

(d) where the Supported Communication Method is an analogue phone line, be responsible for providing the analogue line to which the Terminal is connected at its own cost;

(e) where the Supported Communication Method is an Internet connection, unless otherwise agreed by epay in writing, be responsible for providing the Internet connection and the in-store equipment required to connect the Terminal to the Nominated Store's Internet connection at its own cost;

(f) be liable for the full replacement cost for any Equipment damaged by reason of the Retailer's failure to take proper care of the same;

(g) in the event that the Retailer becomes aware of any fault or defect in the Equipment (or any part or parts thereof) notify epay; and

(h) if a faulty Terminal has been swapped-out, or is no longer required by the Retailer for any reason or is not communicating daily with the Host System, return the Terminal to epay within 10 Business Days of written notice to the Retailer in accordance with epay's delivery instructions or epay will deem the Terminal lost and reserve the right to charge the Retailer for the full replacement cost for a new Terminal. The Retailer shall be responsible for any delivery or freight charges that are not approved by epay for the return of the faulty Terminal.

#### 12.4 Installation of Terminals

(a) The Retailer must provide prominent and sufficient space at Nominated Stores for the Terminal(s).

(b) epay will send the Equipment to Retailer at each Nominated Store by courier service selected by epay. The Retailer will be responsible for physical installation of the Equipment at each Nominated Store. epay will provide Retailer with a customer service telephone number to provide the Retailer with instructions for installing the Equipment over the phone.

#### 12.5 Provision and Transmission of Services

(a) Following installation of the Terminal at a Nominated Store, epay shall download to each Terminal data enabling the initiation of Transactions in such denominations and of such total value as shall be determined by epay.

(b) During the term of this Agreement epay shall update the Terminal with new configuration or software from time to time.

#### 12.6 Minimum Sales Requirement

(a) The monthly minimum sales requirement in respect of Transactions on each Terminal operated by the Retailer will be as prescribed in Schedule 2 (the "Minimum Sales Requirement"). If the Minimum Sales Requirement is not met, epay may at its absolute discretion do one of the following:



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- (i) indefinitely remove a Terminal or Terminal(s) from the Retailer's premises or any Nominated Store;
- (ii) suspend the Retailer's authority to Sell Products at the Nominated Store where that Terminal is located;
- (iii) charge a Terminal Rental Fee as prescribed in Schedule 2; or
- (iv) terminate this Agreement with immediate effect.

(b) In the event that:

- (i) Retailer terminates this Agreement prior to the end of the Term; or
  - (ii) epay terminates this Agreement as a result of the Retailer's material breach of this Agreement, which includes a breach by the Retailer of the exclusivity obligations in clause 8,
- then the Retailer shall be obliged to pay to epay the Minimum Sales Requirement for each month remaining in the Term of the Agreement. The parties agree that the payment by the Retailer to epay under this clause 12.6(b) is a genuine pre-estimate of the loss suffered by epay as a result of early termination of this Agreement.

### 12.7 Paper Stock

#### (a) Ownership of Paper Stock

All Paper Stock shall remain the property of epay until converted into Vouchers. The risk of loss, theft or destruction of Paper Stock shall pass to the Retailer upon the delivery of such Paper Stock to the Retailer. The Retailer shall be fully liable to epay for the replacement cost (including any additional delivery cost) of any loss or damage to any Paper Stock, except in such circumstances and/or according to such policies as epay may, in its absolute discretion, determine from time to time.

#### (b) Delivery of Paper Stock

Delivery of Paper Stock to the Retailer shall be deemed to have taken place on physical delivery by such agent or contractor as epay may use for the purpose.

#### (c) General

- (i) The Retailer is expected to maintain a sufficient amount of Paper Stock to meet the demands of Customers.
- (ii) The Retailer shall not print or attempt to print Vouchers via the Terminal on paper or any other substance other than Paper Stock supplied by epay.
- (iii) Paper Stock is provided by epay solely for the use by the Retailer to issue Vouchers via the Terminal unless otherwise agreed by epay in writing. The Retailer must not use Paper Stock for any other purpose including the issuing of Vouchers via the Point of Sale System.
- (iv) epay at its sole discretion may refuse an order for additional Paper Stock or may charge additional fees for Paper Stock where epay reasonably believes that a Retailer is ordering Paper Stock above the usual and necessary requirements to print Vouchers.

### 12.8 Replacement of Equipment

- (a) If any Equipment malfunctions or breaks down the Retailer must, as soon as practicable after becoming aware of the malfunction or breakdown inform epay Customer Service and not attempt to process any further Transactions until the faulty Equipment is replaced.
- (b) epay acknowledges that it may only replace faulty Equipment and that it will not perform repair services in respect of any faulty Equipment.
- (c) The Retailer must allow access to epay's authorised agents or Representatives during Normal Business Hours to inspect, service or test any Equipment (other than faulty Equipment) at a time pre-arranged by the parties to suit the Retailer's trading conditions.
- (d) Where a new Terminal is required, a replacement Terminal will be dispatched by epay once epay has determined that a replacement Terminal is required to solve the problem reported to epay Customer Service.
- (e) epay shall have no liability to the Retailer in contract, tort or otherwise (including negligence) for any loss, damage, liability or

expense suffered by the Retailer by reason of the malfunction or breakdown of any Equipment.

- (f) The Retailer shall be liable for reasonable administration costs for a swapped out Terminal where the alleged faulty Terminal is determined to be fully functional by epay upon the return of such a Terminal to epay. The Retailer's liability shall be limited to situations where the Retailer did not take reasonable steps to participate in trouble shooting or if the Retailer's telephone line(s)/power source was at fault.

### 13 HOST SYSTEM MALFUNCTION OR BREAKDOWN

13.1 epay shall fully maintain its Host System and shall use reasonable endeavours to rectify any system fault that has a material impact on a Retailer's ability to Sell Products but epay shall have no liability to the Retailer in contract, tort or otherwise (including negligence) for any loss, damage, liability or expense suffered by the Retailer by reason of any interruption to sales of Products due to a failure of the Host System or of the communication links, irrespective of whether the failure is caused in whole or in part by any act or omission of epay.

### 14 SPECIAL PROVISIONS FOR THE SALES OF PRODUCTS VIA THE POINT OF SALE SYSTEM

#### 14.1 Approved Point Of Sale Devices

The Retailer may only Sell Products via a Point Of Sale System, subject to:

- (a) epay agreeing in writing to allow the sale of the relevant Product via the Point Of Sale System;
- (b) the Retailer or the Point Of Sale Provider, certifying and maintaining certification of the Point Of Sale System with epay in accordance with epay's certification requirements and technical specifications which include, but are not limited to, validating the technical integrity of the point of sale integrated solution and compliance with any Product Provider's and epay's brand and Voucher guidelines at the Retailer's own cost.

#### 14.2 Product Additions and Removals

(a) Where epay makes new Products available or removes Products in accordance with clauses 6.1 and 9.1 respectively, the Retailer shall be responsible for promptly updating, at its own cost, the Point Of Sale System to ensure that the relevant Products are available for sale at the Nominated Stores.

#### 14.3 Changes in Voucher format

(a) Where epay notifies the Retailer of changes in Voucher format or content, the Retailer shall be responsible for, at its own cost, updating the Point Of Sale System, to issues Vouchers in accordance with the new Voucher format requirements provided by epay.

#### 14.4 Suspension of Services to Point Of Sale Systems

(a) epay may suspend the provision of Services to the Point Of Sale System at any time for any reason including, but not limited to:

- (i) the Point Of Sale System is deemed to be non-compliant with epay's or Product Provider's certification requirements (including but not limited to, any relevant technical specifications, brand and Voucher guidelines); or
- (ii) to protect the technical integrity of the Host System ("**Point Of Sale System Suspension**").

(b) epay shall have no liability to the Retailer in contract, tort or otherwise (including negligence) for any loss, damage, liability or expense suffered by the Retailer by reason of any interruption to sales of Products due to a Point Of Sale System Suspension.

#### 14.5 Maintenance and breakdown of the Point Of Sale System

(a) The Retailer shall be responsible for maintaining the Point Of Sale System and shall ensure that the Point Of Sale System is regularly serviced throughout the term of this Agreement by appropriately qualified service engineers in accordance with the manufacturer's or Point Of Sale System Provider's instructions.

(b) On discovery of any malfunction of the Point Of Sale System that affects the sale of the Products, the Retailer shall immediately notify epay by telephone via epay's Customer Service helpline and shall





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not attempt to process any further Transactions via the Point Of Sale System until the fault has been rectified by the Retailer and the Point Of Sale System has been thoroughly tested to ensure correct operation.

(c) epay shall have no liability to the Retailer in contract, tort or otherwise (including negligence) for any loss, damage or liability or expense suffered by the Retailer by reason of the malfunction or breakdown of the Point Of Sale System.

### 14.6 epay API Software

(a) The parties acknowledge that the Retailer requires the epay API Software in order to provide the Services under this Agreement. epay hereby grants to the Retailer a perpetual, non-exclusive limited licence to use the epay API Software to fulfil its obligations under this Agreement ("**Software Licence**").

(b) The Retailer shall not modify, copy, duplicate, reproduce, licence or sub-licence the epay API Software, or transfer or convey the epay API Software or any right in the epay API Software to anyone else without epay's prior written consent.

(c) The parties agree that the Software Licence shall be revoked upon termination of this Agreement.

(d) For a period of ninety (90) days following delivery of the epay API Software to the Retailer, epay warrants that the epay API Software shall perform in all material respects according to epay's specifications concerning the epay API Software when used with appropriate computer equipment and/or the Point Of Sale System. In the event of any breach or alleged breach of this warranty, the Retailer shall promptly notify epay. The Retailer's sole remedy shall be that epay shall correct the epay API Software so that it operates according to the warranty. This warranty shall not apply to the epay API Software if modified by anyone or if used improperly or on an operating environment not approved by epay.

### (e) DISCLAIMER AND LIMITATION OF LIABILITY

Except for the express warranty contained in clause 14.6(d) above, epay disclaims and excludes all other warranties, conditions and stipulations whether expressed or implied, statutory, customary or otherwise to the fullest extent permitted by law and the above warranty is in lieu of all obligations and liabilities on the part of epay for damages arising out of or in connection with the epay API Software supplied to the retailer. In particular, the Retailer warrants that it has assessed for itself the suitability of the epay api software for its requirements and accepts and agrees that epay does not make any representations or warranties that the epay API Software will be fit for any particular purpose (whether or not made known to epay) or that the use of the epay API Software will be uninterrupted or error free. The retailer acknowledges that the existence of errors in the epay API Software will not constitute a breach of the Software Licence.

## 15 FEES

### 15.1 Payment for Products

The Retailer must pay to epay the amount of any Product sold by the Retailer, less the Commission Rate applicable to that Product.

### 15.2 Time of sale of Products

For the purposes of clause 15.1, a Product shall be treated as sold:

(a) For Products sold via a Terminal, as soon as the relevant Voucher has been printed, which shall be conclusively determined by epay by reference to its records (whether contained in its central computer systems or otherwise); and

(b) For Products sold via a Point of Sale System, as soon as the Host System records a Transaction.

### 15.3 Service Fee

epay may charge the Retailer a service fee for each Terminal as prescribed in Schedule 2.

### 15.4 Terminal Rental Fee

epay may charge the Retailer a rental fee for each Terminal as prescribed in Schedule 2.

### 15.5 Set-Up Fee

epay may charge the Retailer a set-up fee as prescribed in Schedule 2.

## 16 PAYMENT

### 16.1 Invoicing and Payment

(a) epay shall invoice the Retailer on a weekly basis for the Services performed by it during the preceding week.

(b) Subject to clause 16.1 and clause 16.2, the Retailer shall pay epay's correctly rendered weekly invoices as referenced in Schedule 2. epay may amend the payment terms set forth in Schedule 2 by giving the Retailer 14 days written notice of such change.

(c) Payment shall be by direct debit.

(d) Should any direct debit payment decline for any reason, where applicable, epay will immediately debit the Retailer's Credit Card, detailed in 'DIRECT DEBIT REQUEST - CREDIT CARD' form, for any unpaid amount owed to epay by the Retailer. A surcharge of 5% (five percent) will be charged on all credit card transactions.

### 16.2 Disputed Invoices

Both parties will make reasonable efforts to resolve any disputed invoices within 14 days.

### 16.3 Non-Sufficient Funds

If, the appropriate Payment amount is not available in the Retailers' Direct Debit Account by midday on the First Payment Date or midday on any other Payment Date, the Retailer will be deemed to be in default due to non-sufficient funds ('NSF') and:

(a) for any payment default, the Retailer will be required to pay an NSF charge of \$150;

(b) upon any payment default, epay may (in its absolute discretion) do one or more of the following:

(i) withdraw the Retailer's authority to process Transactions;

(ii) disconnect/remove a Terminal;

(iii) commence proceedings for recovery of outstanding amounts due by the Retailer to epay;

(iv) terminate this Agreement with immediate effect; or

(v) revise the Retailers Credit Limit.

epay may elect to waive an NSF charge if the Retailer can demonstrate to epay's satisfaction that the failed payment was not the fault of the Retailer.

### 16.4 Cost Recovery

All expenses, costs or disbursements incurred by epay in recovering any outstanding monies including but not limited to debt collection agency fees shall be paid by the Retailer.

### 16.5 Credit Limit

epay will establish and maintain a Credit Limit for the Retailer in accordance with epay's internal credit policy. epay may amend the Credit Limit at any time and at its sole discretion.

## 17 GST

### 17.1 Interpretation

Words or expressions used in this clause 10 which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause.

### 17.2 Consideration is GST exclusive

Any consideration to be paid or provided by a party ("**Receiving Party**") to the other party ("**Supplying Party**") for a supply made by the Supplying Party under or in connection with this Agreement, unless specifically described in this Agreement as 'GST inclusive', does not include an amount on account of GST.

### 17.3 Gross up of consideration

Despite any other provision in this Agreement, if the Supplying Party makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as 'GST inclusive'):

(a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause ('**GST exclusive**



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consideration') is increased by, and the Receiving party must also pay to the Supplying Party, an amount equal to the GST payable by the Supplying Party on that supply; and

(b) the amount by which the GST exclusive consideration is increased must be paid to the Supplying Party by the Receiving Party without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

### 17.4 Reimbursements (net down)

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

### 17.5 Specific Percentage

If any amount under this Agreement is calculated as a specified percentage of a fee, revenue stream or otherwise arises from a revenue sharing arrangement, that amount shall be calculated by reference to the relevant revenue net of GST (if applicable).

### 17.6 Tax Invoices

(a) epay will issue a tax invoice for each taxable supply it makes to the Retailer without request. Without limiting any other provision of the Agreement, the Retailer must pay the amount referred to as GST on the tax invoice.

(b) The parties agree that no tax invoice will be issued by the Retailer in respect of the supply of the Services to epay in connection with the Collection Products listed on Schedule 1. epay will instead generate and forward a Recipient Created Tax Invoice ("RCTI").

(c) Each party acknowledges and warrants that at the time of entering into this Agreement, it is registered for GST.

(d) Each party must notify the other party if it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by an authority relating to the creation of RCTIs.

### 17.7 Agency

If one party being either a sub-agent or agent ("**GST agent**") makes supplies or acquisitions under this Agreement on behalf of a head agent or principal ("**GST principal**") to third parties:

(a) the GST agent acknowledges that it will be treated, for the purposes of the GST law, as making the supplies to, or acquisitions from, the third parties and the GST principal will be treated as making corresponding supplies to and acquisitions from the GST agent;

(b) the GST agent will issue a tax invoice and adjustment note (if required) to the third party using the GST agent's name, ABN and business letterhead and the GST principal will not issue any tax invoice or adjustment note relating to these supplies;

(c) if the GST agent sells through a sub-agent, the GST agent will procure that the sub-agent issue a tax invoice and adjustment note (if required) using its own name, its ABN and its business letterhead; and

(d) if the GST agent or the GST principal cease to be registered for GST, this sub-clause will cease to have effect.

### 17.8 Arrangements for the supplies of Vouchers

Notwithstanding anything to the contrary in this Agreement, if one party being either the sub-agent or agent ("**GST agent**") makes supplies of a Product under this Agreement to a third party as an agent of the head agent or principal ("**GST principal**"):

(a) The GST agent and GST principal agree that any amount payable by the GST principal to the GST agent as a commission or similar payment for making the supply of the voucher to third parties is to be treated as if it were not for a taxable supply made by the GST agent.

(b) for the avoidance of doubt, the GST agent must not issue a tax invoice to the GST principal for the supply of commission services made in respect of supplies of vouchers to a third party under this Agreement.

## 18 WARRANTIES

### 18.1 The Retailer warranties

(a) The Retailer represents and warrants to epay that:

(i) it has the power to enter into, exercise its rights, perform and comply with its obligations under this Agreement;

(ii) all actions, conditions and things required to be taken, fulfilled and done (including the obtaining of all necessary consents) have been taken, fulfilled and done in order to enable the Retailer lawfully to enter into and exercise its rights and perform and comply with his obligations under this Agreement and that such obligations are valid, legally binding and enforceable;

(iii) its entry into, exercise of rights and/or performance of or compliance with its obligations under this Agreement do not and will not violate any restriction imposed by (I) any law to which he is subject or (II) being a company, its memorandum or articles of association or, as the case may be, certificate of incorporation or by laws;

(iv) its entry into, exercise of his rights and/or performance of or compliance with its obligations under this Agreement do not and will not violate any agreement to which it is a party; and

(b) The Retailer warrants and undertakes to epay as a continuing obligation that the representations contained clause 18.1(a) shall remain true for the duration of this Agreement and undertakes to notify epay immediately of:

(i) any changes or proposed changes in the ownership or the nature of the Retailer's business; or

(ii) the Retailer becoming aware of any matter or event which constitutes or might give rise to a breach of any of the above representations warranties and undertakings and shall promptly provide epay with all details of such matters as epay shall reasonably require.

### 18.2 epay Warranties

epay represents and warrants to the Retailer that:

(a) the Equipment shall be fit for the purpose intended and comply with all applicable regulatory standards and laws; and

(b) it has full capacity and all necessary licences, permits and consents to enter into and comply with its obligations under this Agreement.

### 18.3 Liability of epay

(a) Save as that provided in clause 14.6(e) and except where to do so would contravene any law or make any part of this Agreement void or unenforceable, epay:

(i) excludes any and all liability to the Retailer for any special, indirect or consequential loss or damage (including loss of profits, commission or revenue) suffered or incurred by the Retailer in connection with this Agreement, regardless of the Cause of Action under which the liability arises; and

(ii) limits its liability for all claims and proceedings in connection with this Agreement, regardless of the Cause of Action under which they are made or brought, in aggregate to AUD\$3000.

(b) Clause 18.3(a) does not apply to liability for personal injury or death caused by epay and clause 18.3(a)(ii) does not apply to deliberate breaches or fraudulent or dishonest acts or omissions of epay.

## 19 TERMINATION

### 19.1 Termination

(a) epay may terminate this Agreement with immediate effect by notice in writing to the Retailer on or at any time after the occurrence of any of the following events:

(i) if the Retailer breaches any part of this Agreement, and that breach not being rectified by the Retailer within 30 days of a notice from epay to do so;

(ii) the making of an administration order in relation to the Retailer or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of, any of the Retailer's assets;

(iii) the Retailer making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from his creditors generally;



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- (iv) the making of a bankruptcy order against the Retailer.
- (v) the Retailer committing fraud, misrepresentation or deceit including without limitation tampering with Paper Stock or a Terminal; or
- (vi) the Retailer entering into any agreement with any other person for goods or services relating to the Products without the prior written consent of epay.

(b) The Retailer may terminate this Agreement with immediate effect by notice in writing to epay on or at any time after the occurrence of any of the following events:

- (i) if epay breaches any part of this Agreement, and that breach has not been rectified by epay within 30 days of a notice from the Retailer to do so.
- (ii) if the Equipment breaks down or malfunctions and epay fails to dispatch a replacement Terminal within the service levels in clause 12.8(d) on three or more occasions or fails to replace a faulty Terminal for a continuous period of 10 Business Days.
- (iii) the making of an administration order in relation to epay or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of, any of epay's assets;
- (iv) epay making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from his creditors generally; or
- (v) the making of a bankruptcy order against epay.

(c) This Agreement shall cease to apply with respect to sales of Products for use on a particular Provider on termination or expiry of epay's corresponding Provider Agreement and neither party shall have any liability to the other in respect of such termination. On expiry or termination of all of the Provider Agreements, this Agreement shall immediately and automatically terminate.

(d) Notwithstanding the expiry or termination of a Provider Agreement with a particular Provider, this Agreement shall continue in full force and effect with respect to the sale of Products for use on any other Providers in respect of which a valid Provider Agreement remains in force.

### 19.2 Consequences of early termination by the Retailer

(a) If this Agreement is terminated by the Retailer for any other reason than in accordance with clause 19.1(b) prior to the end of the Initial Term or the Renewal Term where applicable, epay may at its discretion charge the Retailer an Early Termination Fee as described in Schedule 2.

### 19.3 Effect of Termination or Suspension

(a) Upon termination of this Agreement all rights and obligations of epay and the Retailer shall cease to have effect immediately except that termination shall not affect:

- (i) the rights and obligations of the parties accrued at the date of termination; and
- (ii) the continued existence and validity of the rights and obligations of the parties under those provisions of this Agreement which are expressed to survive termination and any provisions of this Agreement necessary for the interpretation or enforcement of this Agreement.

(b) Immediately upon termination of this Agreement, the Retailer must:

- (i) cease offering for sale, Selling or supplying Products and must not hold itself out as being authorised to offer for sale, Sell or supply any Products;
- (ii) permit epay and its authorised representatives to enter the premises at which the Equipment is located and to remove the Equipment and where the termination of this Agreement was by reason of a breach by the Retailer of its obligations under the Agreement, the Retailer shall pay epay's reasonable costs of removing the Equipment;
- (iii) cease to make any use of the epay Logos and the Provider Logos (unless use and any such Provider Logo has been independently authorised by the relevant Provider), and shall not use any name,

logo, trade mark or service mark as so nearly resembles it as to be likely to deceive or to cause confusion with the epay Logos or the name 'epay'.

(iv) cease to make any use of epay's Intellectual Property Rights and shall not do anything which infringes or is likely to infringe any of epay's Intellectual Property Rights;

(v) pay to epay (or as may be directed in writing by epay) all sums owing to epay under or in connection with this Agreement as at the date of termination; and

(vi) take all such further action as may be reasonably specified by epay in connection with the termination of the authority of the Retailer to Sell Products, or hold or process any Paper Stock.

(c) Notwithstanding the termination of this Agreement in whole or in part (howsoever arising) the provisions contained in clauses 2.2, 12, 14.4(b), 14.6(e), 18.3, 21 and 22 shall survive in full force and effect.

(d) Upon suspension of the Retailer's authority to Sell Products at any Nominated Store, epay may remove the Terminal(s) and other items of Equipment and all Paper Stock located at such a Nominated Store.

(e) Where the Retailer is authorised to Sell Products at more than one Nominated Store, epay may in lieu of terminating the Agreement at its discretion terminate or suspend the Retailer's authorisation to Sell Products at the Nominated Store or Nominated Stores at which the ground of termination occurred.

### 20 CREDIT REPORTING AGENCY ACKNOWLEDGEMENT AND CONSENT

The Retailer acknowledges and authorises epay Australia Pty Ltd to obtain from and provide to any credit reporting agency a credit report containing personal and/or commercial information relating to the applicant's personal and/or commercial credit activities.

### 21 CONFIDENTIALITY

21.1 Each party will keep confidential and shall not use for any purpose (save for the performance of its obligations and exercise of its rights under this Agreement, or where disclosure is required by law) any and all information of a confidential nature concerning the business of the other party, and the Retailer's obligation under this clause shall extend to any such information concerning any Provider.

21.2 The Retailer shall keep all data or information obtained by them, which is not publicly available, relating to epay, any Provider, the Service and the terms of this Agreement strictly confidential and shall not use such data or information for any purpose other than performing its obligations under this Agreement. The Retailer shall not use any data or information relating to the customers of any Provider for any purpose whatsoever and shall not permit disclosure of such data or information to any third party. The Retailer shall ensure that all of its staff will comply with these obligations of confidentiality.

21.3 Notwithstanding clause 21.1, the Retailer consents to epay disclosing to Providers such information from the Retailer that is reasonably required by the Providers including the Retailer's business details, address details, store location and Transaction data.

### 22 LOGOS AND INTELLECTUAL PROPERTY

22.1 Logos and Intellectual Property Rights

The Retailer must not:

- (a) claim any right in or to the epay Logos or Provider Logos, except as directed or approved by epay or, in relation to a Provider, by the Provider;
- (b) claim any right in or to epay's Intellectual Property Rights, which shall remain with epay, or make any use of epay's Intellectual Property Rights except as approved by epay or permitted under this Agreement;
- (c) use the epay name, trademark or logo in connection with the sale of Products which has not been approved by epay; or
- (d) use any of the Provider's name, trademark, or logo in connection with the sale of Products which has not been approved by epay on behalf of, or directly in their own right by, the Provider.



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## epay AUSTRALIA RETAILER AGREEMENT Terms & Conditions

### 23 FORCE MAJEURE

23.1 Neither party shall be deemed to be in breach of this Agreement or otherwise liable to the other party for any delay in or non-performance of its obligations under this Agreement if and to the extent that the delay or non-performance is due to circumstances beyond the reasonable control of that party including but not limited to a failure of or interruption in the provision of essential services such as electricity supply, bank payment systems or postal deliveries or the delivery of Paper Stock or other consumables.

### 24 MISCELLANEOUS

#### 24.1 Relationship

Nothing in this Agreement shall be construed as creating a partnership or joint venture between the parties. Except as expressly provided for in this Agreement, the Retailer shall not have and shall not hold himself out as having any authority or power to bind epay or the Providers or to contract in the name of or create liability against epay or the Providers in any way or for any purpose. For the avoidance of doubt, epay shall act as an agent on behalf of the Provider for the purposes of receiving and remitting Customer payments for the sale of Products.

#### 24.2 Notices

Notices may be served either by delivery to a party personally, by posting to the party's last known address by pre-paid ordinary mail or facsimile or, if the address is outside Australia, by pre-paid air mail or facsimile to the party's last known address for service. If a communication is given by:

(a) post, it is taken as received if posted within Australia to an Australian address 3 Business Days (in place of receipt) after posting; or

(b) facsimile, and the sender's facsimile machine, the report will be prima facie evidence that the facsimile was received by the addressee in legible form at the time indicated on that report.

#### 24.3 Amendment

epay does not presently intend to amend the terms of this Agreement but reserves the right to do so giving not less than 30 (thirty) days' written notice to the Retailer.

#### 24.4 Waiver and exercise of rights

A single or partial exercise or waiver of a right relating to this Agreement will not prevent any other exercise of that right or the exercise of any other right.

#### 24.5 Governing law and jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws in force in New South Wales. Each party irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

#### 24.6 Entire Agreement

This Agreement embodies the entire agreement between the parties as to the subject matter of this document. All previous negotiations, explanations, understandings, representations, warranties, memoranda, commitments or information provided in relation to, or in any way affecting, the subject matter of this document are merged in and superseded by this Agreement and shall be of no force or effect whatsoever and no party shall be liable to any other party in respect of those matters.

#### 24.7 Severability

If any provision of this Agreement is held to be invalid or unenforceable for whatever reason, the remaining provisions shall remain in full force and effect.