



# Terms and Conditions

Effective from 10 January 2025



These Terms and Conditions ("Terms") together with your accepted Application form the legal agreement between you ("you") as specified in the Application and Next Payments Pty Ltd ABN 59 160 985 106 ("NEXT", "we", "our" or "us") and govern our supply and your use of the Pago Facility and the Services ("Agreement"). Capitalised words used in these Terms and in the Application have the meaning given in Schedule 1 to these Terms.

## 1. Your Application

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- 1.1 Your Application may be signed and submitted electronically. We may accept, partially accept or reject your Application in our sole discretion.
- 1.2 By submitting your Application and agreeing to be bound by these Terms, you agree that upon acceptance by us, a legally binding agreement is entered into by you with us and that the person(s) submitting the Application is duly authorised to enter into binding agreements on your behalf.
- 1.3 We will provide you with the Pago Facility and Services specified in the Application in accordance with these Terms.
- 1.4 You represent and warranty that:
  - (a) All information you provide to us is complete, accurate and not misleading or deceptive; and
  - (b) If you have disclosed personal information to us, you have obtained the relevant individual's prior consent to the disclosure and otherwise complied with your obligations referred to in this Agreement and generally elsewhere.
- 1.5 To the extent that these Terms relate to your use of the Pago Facility, these Terms constitute an agreement between us, you and Cuscal Limited ACN 087 822 455 ("Cuscal"). In relation to Services relating to Scheme transactions, our rights under these Terms are also rights exercisable by Cuscal.
- 1.6 In addition to these Terms, you agree to comply with:
  - (a) The User Guide;
  - (b) Any requirements that a Scheme imposes on us that relate to the Pago Facility that we notify you of;
  - (c) Any reasonable directions given by us; and
  - (d) All applicable laws.

## 2. Term of our Agreement

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### 2.1 Commencement

The Term of our Agreement commences on the Commencement Date and will continue until the expiry of the Term unless terminated earlier in accordance with clause 30 or held over in accordance with clause 2.3.

### 2.2 Expiry

You must notify NEXT in writing at least 7 days prior to expiration of the Term that you want the Agreement to end. Following receipt of your notification, NEXT will provide you with a prepaid satchel to return the Pago Facility to us within thirty (30) days.

### 2.3 Holding Over

If you do not provide such notice to NEXT then the Term of this Agreement shall be extended (the Holding Over Period) during which period your rental of the Pago Facility will continue at the same agreed fees and otherwise on the same terms and conditions as set out in this Agreement. The Holding Over Period may be terminated at any time by either party giving one month's written notice to the other party.

Following termination of the Holding Over Period, NEXT will provide you with a prepaid satchel to return the Pago Facility to us within thirty (30) days.

## 3. Fees

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### 3.1 Fees

The following Fees detailed in your Application are payable to us:

- (a) Merchant Service Fee being a fee charged per eligible transaction.
- (b) Terminal Rental Fee being your monthly rental fee for the Pago Facility.
- (c) Chargeback Fee being the fee to cover the administrative cost of each Chargeback received.
- (d) Dishonour Fee for each transaction not honoured pursuant to the Direct Debit Request.
- (e) Lost/Stolen Terminal Fee we will charge you if the Pago Facility is lost, stolen or not returned to us whether or not you are at fault.
- (f) Technician Install Fee if you select to have a technician attend your premises to install a Pago Facility.

The following additional Fees are also payable to us:

- (a) Accessory Fees, for consumables and/or accessories acquired by you for use with or in relation to a Pago Facility (including postage fees).
- (b) Cancellation Fee where your agreement with us is for a fixed term and you wish to cancel your agreement with us before its term has ended, as set out in clause 30.4

### 3.2 GST

Unless otherwise indicated, all Fees are expressed as being inclusive of GST.

### 3.3 Disclosure of our Fees

You may not disclose our Fees to any third party unless you are required to do so by law.

## 4. Authorised Signatories

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### 4.1 Appointment and Authority of Authorised Signatory

Upon acceptance of these Terms, the individual nominated as such on and who signs and/or submits the Application will be your representative ("Authorised Signatory"). You warrant that the Authorised Signatory has the necessary authority and power to access, use and control the Pago Facility and to disclose and receive all information relevant to your account with us. Your Authorised Signatory may authorise your employees to operate the Pago Facility on your behalf.

### 4.2 Changes to Authorised Signatory

If you wish to change your Authorised Signatory or to add an additional signatory you are required to provide written notice to us of the change.

## 5. Transaction Processing

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### 5.1 Use of the Pago Facility

You must only process Transactions and use the Pago Facility in the business specified in your Application.

### 5.2 Your General Obligations

- (a) You shall not make any representation or warranties on our behalf to any person without our express and written approval.
- (b) You shall ensure that you comply with the monetary limits on the number of daily transactions imposed by a Card Issuer on a Cardholder.

- (c) You shall ensure that you will not possess or have access to you any PIN or passcode of any Cardholder nor shall you process any transaction using your own or your employee's card.
- (d) If you enter into a separate agreement with a Scheme Operator you shall indemnify and hold us harmless from any damages or liability that may arise from the operation or effectiveness of the Schemes you are participating in. For avoidance of doubt, our sole obligation in relation to any Transaction is to transmit the particulars of the said Transaction to the concerned Scheme Operator.
- (e) You must promptly notify us of any malfunction or error in connection with the Pago Facility.
- (f) Except in cases of manifest errors, you agree that the Transaction data produced by the Pago Facility is correct and conclusive. As such, you agree to hold us free and harmless from any error, delay, malfunction, or failure caused or contributed to or initiated by your integrated point-of-sale software.

## 5.3 Participation in Schemes

As a default, all Pago Facilities shall, as much as possible accept all Card Transactions. If you want to exclude any Scheme, you must submit a written request as well as furnish us all the documents we may reasonably require. We shall use our commercially reasonable efforts to facilitate your request for exclusion as soon as possible.

## 5.4 Disclaimer of Warranties

You accept a Card, and you process the Card at your sole risk. As such, you understand and agree that we do not make any express or implied representations, nor do we provide any form of assurances as regards the credited worthiness of any person or whether a particular Card has sufficient funds.

## 5.5 Your Representations and Warranties

You represent and warrant to us that in respect of each transaction that you process or that is processed on your behalf:

- (a) All information given to us in respect of that transaction is true and correct;
- (b) The transaction is valid and does not fall within any of the circumstances mentioned in clause 5.6; and
- (c) The sale in respect of the transaction is not subject to any dispute, set-off or counterclaim.

## 5.6 Invalid Transactions

- (a) A transaction shall be deemed as an Invalid Transaction if any of the following circumstances occur:
  - i. If the transaction is or the circumstances which gave rise to the transaction is contrary to the law or the rules and/or regulations imposed by a Card Issuer or Scheme Operator;
  - ii. If the transaction is fraudulent or was made without authority of the rightful Cardholder or if the transaction is unsigned, when a signature is required;
  - iii. When the transaction is purely a remittance of funds and not an exchange of money for goods and/or services. These includes payments of wages, salaries or involves a transaction purporting to be a Refund but there is no corresponding sales transaction from which the same is based;
  - iv. If the Card used for the transaction is not valid, current, has been declared lost, stolen or otherwise rejected at the time of the transaction;
  - v. When a single transaction is split into two (2) or more transactions;
  - vi. The transaction or the circumstances surrounding the same violates or does not conform with these Terms, the User Guide or any of our instructions;
  - vii. If the transaction is not in connection with the provision of goods or services by you to a genuine customer; or
  - viii. Any other circumstances which, in our reasonable discretion, renders any transaction as invalid.
- (b) Despite any other provision in these Terms:
  - i. We do not have an obligation to process an Invalid Transaction;
  - ii. We are not liable if we do not process an Invalid Transaction;
  - iii. We will use commercially reasonable efforts to not process a transaction where we know that the transaction if processed would be an Invalid Transaction; and
  - iv. Except to the extent that we are in breach of clause 5.6(b)(iii), we are not liable if we process an Invalid Transaction.

## 6. MOTO Transactions

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### 6.1 Things You Must do in Respect of MOTO Transactions

- (a) You must take reasonable steps to verify the identity of the person you are dealing with in order to confirm that they are the genuine Cardholder.
- (b) You must record reasonable identification details of the person you are dealing with, as well as the commencement and expiry dates of the Card.
- (c) You must ensure that each person processing such a MOTO transaction uses best endeavours to verify the authenticity of the information given to you by the customer.
- (d) You must obtain authorisation via the MOTO option on the Pago Facility for all MOTO transactions regardless of the value of the transaction.
- (e) Where there will be a delay of more than five (5) days in you dispatching goods or providing services ordered by telephone, you must not process the transaction in respect of such goods or services until the day of dispatch.

### 6.2 Suspicious Transactions

Where we believe that a MOTO transaction is suspicious or requires investigation, we may hold settlement or Chargeback in accordance with these Terms.

## 7. Settlement and Account

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### 7.1 Maintain Account

You must maintain at least one (1) verified and operational Australian bank account ("Account") during the term of this Agreement and for at least one hundred and twenty (120) days after its expiry or termination.

### 7.2 Account Name

Where you are a company, the name of the account holder of the Account must be identical to your legal entity as registered with ASIC.

### 7.3 Authorised Debits

You authorise us to debit the following funds from your Account:

- (a) Fees payable under these Terms;
- (b) Any Scheme fines or penalties payable because of your breach of these Terms or which we incur because of your actions or omissions;
- (c) The full amount of Refunds presented by you;
- (d) Any overpayments made by us;
- (e) Any Chargeback;
- (f) Amounts paid by us for transactions where we are investigating the validity of the transaction or a claimed Chargeback of the transaction;
- (g) Duties and taxes payable by you in relation to or connection with the Services;
- (h) Any deficiency in a payment disclosed in an audit or check by us;
- (i) In the circumstances referred to in clauses 8.2, 16.2 and 18.3; and
- (j) Any other amounts you owe or are required to pay us.

### 7.4 Changing Accounts

You can change your Account by providing us with at least fourteen (14) days' notice in writing and evidence of the new Account. We must confirm that the Account has been changed before you close the original account.

### 7.5 Withhold Payments for Disputes

We may withhold or suspend payment of any amount payable until we have concluded investigations into any claimed Chargebacks or into the validity of any transactions.

### 7.6 Sufficient Funds

You must ensure that, at all times, you have funds in the Account to pay the Fees. You authorise us to debit your Account even where to do so would result in the Account having a debit balance or to exceed any overdraft limit that may be in place.

## 7.7 Effect of Insufficient Funds

If you do not have sufficient funds in your Account, to pay the Fees we may suspend the Pago Facility and charge interest at a rate equal to the Reserve Bank of Australia's cash rate target plus 5% which will accrue daily until the funds are able to be debited from your Account. In addition, you will indemnify us for all costs reasonably incurred by us (including legal costs) in respect of the collection of unpaid Fees.

## 8. Settlements

### 8.1 Settling to the Account

Except as otherwise provided in these Terms, we will accept all Valid Transactions. Once accepted, we shall use our commercially reasonable efforts to ensure that the proceeds of the Valid Transactions are credited to your Account:

- (a) Within two (2) business days for local Transactions;
- (b) Within four (4) business days for International Transactions; or
- (c) As soon as practicable in any other case.

Notwithstanding the above, we reserve the right to modify the timelines from time to time as the circumstances may warrant. Further, you understand and agree that the time it takes for the amounts we have credited to your Account to become disposable funds is contingent on the rules and regulations imposed by the financial institution or bank that holds your Account.

### 8.2 Delay in Settlement

Notwithstanding anything to the contrary, we reserve the right to delay any settlement in your favour as well as to delay the payment instruction until:

- (a) Cuscal fulfills its obligations in cases where Cuscal has delayed processing the pertinent Transaction; and
- (b) We receive payment from Cuscal in respect of the subject Transaction.

If we have credited to your Account the proceeds of a particular Transaction but Cuscal has failed to make the necessary payments to us, you understand and agree that, without limiting any other recourse, you shall immediately repay to us the aforesaid credited amount without need of any demand. To this end, you hereby authorise us to debit or set-off the aforesaid incorrectly credited amount from your funds in our possession.

### 8.3 Processed Transactions may be Disputed

Any Transaction processed, authorised or settled by us shall not be deemed as conclusive proof that the said Transaction is valid. On the contrary, any Transaction may be subject to dispute or a chargeback in accordance with these Terms.

## 9. Direct Debit Request Service Agreement

### 9.1 Direct Debit Request Service Agreement

This clause constitutes your Direct Debit Service Agreement with us, with User ID and ABN as provided in the Application. By acknowledging the Direct Debit Request details in the Application, you authorise and direct us to debit funds from your Account. You must always maintain a valid Direct Debit Request for your Account. This is an essential term and failure by you to maintain a valid and current Direct Debit Request in accordance with this clause will give us the right to terminate our relationship in accordance with these Terms.

### 9.2 Direct Debit Authority

You authorise and direct us to debit funds from your Account the amounts specified in clause 7.3.

## 9.3 When we will Debit your Account

We will debit your Account on the date that a payment is due or, if the due date is not a Business Day, we will debit your Account on the next Business Day.

## 9.4 Changes to Direct Debit by Us

You agree that we may, at our absolute discretion, modify the frequency and amount of debits we make pursuant to the directions of a Direct Debit Request provided that we serve on you a notice indicating the modifications made through your monthly statement at least thirty (30) days before the date the said modifications are intended to take effect.

## 9.5 Failure of Direct Debit

In case a direct debit fails on account of insufficiency of funds, incorrect account information or such other cause within your reasonable control, you agree that:

- (a) We will attempt to repeat the direct debit transaction up to three (3) times in the following two (2) weeks and for each failure or dishonour, we may charge you a Dishonour Fee to be determined by us from time to time and pass on any charges we incur as a result of a failed or rejected direct debit;
- (b) Any penalty, fee and/or interest charged upon you by your bank or financial institution holding your Account shall be borne by you exclusively; and
- (c) If payment cannot be made through direct debit, you bind yourself to make payment to us through any other method.

## 9.6 Privacy and Disclosure

Our privacy policy and personal information handling practices applies to all information that we collect about you under this clause and we will not disclose any details of your Direct Debit Request unless:

- (a) The disclosure is to a financial institution and is necessary to enable us to perform or otherwise exercise our rights and obligations pursuant to these Terms; and
- (b) We are required or permitted by law to do so.

## 9.7 Errors and Disputes

If you believe that there has been an error in the debiting of your Account, you should contact us as soon as possible by calling us on 1300 999 850 or emailing us [support@pagoeftpos.com.au](mailto:support@pagoeftpos.com.au) and we will investigate your request.

## 9.8 Cancellation or Suspension of Direct Debit

You may cancel or suspend any direct debit from your Account if you serve us with a written notice via email at [support@pagoeftpos.com.au](mailto:support@pagoeftpos.com.au) or call us at 1300 999 850 at least fourteen (14) days before the date your intended cancellation or suspension shall take effect. Before any cancellation or suspension under this clause shall take effect, you understand and agree that you must nominate a new Account and/or execute the necessary Direct Debit Request for the said Account.

# 10. Refunds

You must ensure you have sufficient funds in your Account to meet your Refund obligations. In any event, you hereby agree that we may, at our absolute discretion, limit the number of Refunds we will process to the periodic sum of funds that are processed by you through the Pago Facility. Refunds that you make must be returned to the same Card used for the original sale.

# 11. Merchant Surcharges

## 11.1 Surcharging

You agree that any surcharge you will impose must be within the limits prescribed by law and that the amount of the same must be equal to your cost of acceptance (being the fees that we charge to you plus any other amounts permitted by law).

## 11.2 Display of Surcharges

You must, at the point of sale, clearly and prominently display the value, in percentage terms, of the amount of the surcharge, if any, that you will impose on a Cardholder. You agree that the amount of surcharge that you may impose on a Cardholder must not be unreasonable and must only cover your costs of accepting the concerned Transaction and must not cross-subsidise across Schemes.

## 11.3 Refunds

If you agree to make any refund, partial or otherwise, to any Cardholder, you agree that you shall likewise refund any surcharge you have previously charged to the said Cardholder relative to the original transaction from which the said Refund is based. In case of partial refund, you are only required to refund the amount of surcharge in proportion to the amount you have refunded to the Cardholder.

# 12. Changes to your Details

## 12.1 Notice of Changes

If a change occurs to your contact details, business or company name, Authorised Signatories, any detail in your Account, the nature of your business, or any circumstances that may affect your ability to comply with your obligation under these Terms, you agree to immediately notify us in writing. You agree to provide us with such evidence we may reasonably require proving such change. Upon receipt of such notice and supporting evidence, you understand and agree that we may reevaluate your ability to perform your obligations under these Terms and as such, modify your access or use of the Pago Facility and Services we provide you as we deem necessary.

## 12.2 Change in Control

Notwithstanding anything to the contrary, if there is a change in the control of your business, you understand that you must provide us a written notice of the same at least ten (10) days before the said change of control takes effect.

## 12.3 Effective Date of Changes

Any request for change to your details, except changes affecting ownership of your business or those relating to your Account, if accepted by us, shall take effect within seventy-two (72) hours from the time we received the notice specified in clause 12.1 or within seventy-two (72) hours from the time we receive such other documents reasonably requested by us to support such change such as a Direct Debit Request, whichever is later.

# 13. Chargebacks

## 13.1 Chargebacks

If we determine that a Transaction is an Invalid Transaction under clause 5.6 or is being disputed, wholly or partially, by the Cardholder, we may refuse to accept the same. However, in case the said Transaction has already been accepted by us, you agree that we may chargeback amount processed by us. To this end, you agree to provide us and the relevant Scheme with all documentation and records relating to a Transaction that is the subject of a Chargeback. In any event, you acknowledge and agree that it is the relevant Scheme which makes the final determination as to whether a Transaction will be subject to a Chargeback. In case of chargebacks, you agree and thereby authorise us to debit the amount involved from your Account as provided under clause 7.3.

## 13.2 Charges

If there is a Chargeback, NEXT will offset any Chargeback against the settlement proceeds for the day. A Chargeback Fee will apply.



## 13.3 Excessive Chargebacks

If, in our reasonable opinion, there are excessive occasions where Chargebacks occurs or there are numerous fraudulent transactions within any period of time, we shall immediately notify you of the same. Upon receipt of such notification, you must provide us a remediation plan that is acceptable to us. Failure to provide an acceptable remediation plan shall be sufficient basis to terminate these Terms for breach.

## 14. Pago Facility

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### 14.1 Rental and Use of the Pago Facility

You agree to rent the Pago Facility and must ensure that:

- (a) It is used with reasonable care and in accordance with its user guide or manual and only for the purpose it was designed;
- (b) It is used only in connection with the Services;
- (c) It is not transferred or relocated from the delivery address to any other location without our express approval;
- (d) It is not, through any means, taken outside or beyond your direct control;
- (e) Appropriate and reliable communication and internet access is readily available so that the operating systems of the Pago Facility and other technical support systems can be regularly updated and/or upgraded, whichever is applicable;
- (f) You will regularly check for evidence of tampering including skimming devices and confirm the identification number on the Pago Facility is correct. You must contact us immediately if you discover any evidence of or suspect that Pago Facility has been tampered with; and/or
- (g) You employ sufficient electrical surge protection, as well as adequate protection against theft, loss, vandalism, fire, flood, earthquake, misuse, neglect and other forms of damages that we may determine from time to time.

## 15. Delivery and Installation

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### 15.1 Delivery

We will deliver the Pago Facility to your Shipping Address as set out in your Application.

### 15.2 Accepting Deliveries

Within forty-eight (48) hours of delivery of the Pago Facility you must notify us in writing by email of any shortages, defects or damage. To the maximum extent permitted by law, failure by you to give notice to us with forty-eight (48) hours will be deemed acceptance in full.

### 15.3 Self-Install

You should identify a safe location for the installation of the Pago Facility which is unobstructed, clear from clutter and any other hazards.

You must ensure that the Pago Facility is installed in accordance with our User Guide and procedures for installation. We will provide you with assistance by telephone, electronic or other means however we are not responsible for the installation of the Pago Facility, and you must do so at your own cost.

We will provide you with reasonable assistance over the phone or electronically by explaining how to install software required to connect the Pago Facility to point-of-sale software that we support an integration for.

You must ensure you maintain operating systems that are supported and that your systems are upgraded as necessary to ensure that Transactions can be initiated and processed.

### 15.4 Technician Install

If we have agreed to facilitate installation by one of our field technicians, they will contact you to arrange access to your premises. On the scheduled day, they will install the Pago Facility for you. If our technicians arrive at your premises on the scheduled day but are unable to perform the install due to circumstances

outside of our control, you will be charged installation costs if you organise for them to return at another time.

During installation, our field technicians will provide basic training on how to operate the Pago Facility.

## 16. Title and Risk

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### 16.1 Title

The Pago Facility remains our property at all times. You must not sublet, transfer, dispose of, grant a security interest over, permit a security interest to be registered over or otherwise deal with any rights or interest in the Pago Facility.

### 16.2 Risk

The Pago Facility delivered to you will be under your care. As such, all risks for loss or damage as well as all cost incurred as a result thereof shall be borne by you exclusively from the time such Pago Facility is received by you. All costs associated with any repair or replacement of the Pago Facility shall be paid by you by way of debiting funds from your Account. The discretion to repair or replace a damaged Pago Facility under this clause shall be exclusively decided by us.

## 17. Return of Pago Facility

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At the expiration of the Term or the earlier termination of this Agreement, you must return the Pago Facility to us.

## 18. Service, Repair and Upgrades

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### 18.1 No Third-Party Repairers

Unless otherwise authorised by us in writing, no third party shall be allowed to service or repair any Pago Facility delivered by us to you.

### 18.2 No use of Pago Facility with other Acquirers

You are not allowed to use a Pago Facility you have rented from us with any other acquirer. In the event that you do, we reserve the right to terminate the Agreement and you must immediately return the Pago Facility.

### 18.3 New Pago Facility

Within thirty (30) days from your receipt of a new, upgraded or repaired Pago Facility, you must return any rented Pago Facility in your possession to us. Failure to return the said Pago Facility within the aforesaid period shall render you liable to pay us the Lost/Stolen Terminal Fee by way of debit as provided under clause 7.3.

## 19. Intellectual Property and Software

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### 19.1 Ownership and Licence

At all times we retain ownership over our Intellectual Property Rights together with all title and interest in any software relevant to the Pago Facility and the Services. Unless otherwise agreed in writing, we grant you a revocable, non-assignable, non-transferable, limited, license to use the software solely in connection with the Services and your Business.

### 19.2 Limitations on your use of our Intellectual Property Rights

In relation to your use of our Services as well as in consideration of the access we have given you to our software, you agree that you shall not directly or indirectly disassemble, copy, recreate, decompile, reverse engineer, modify, translate, adapt, create derivative works from, or sublicense any part of the software nor perform any act which may be considered as "phishing", "mining" or attempting to trigger remote code for

the purpose of accessing data or material you would not otherwise have access to. Neither shall you circumvent, disable or otherwise interfere with security-related features of the software or the Services.

## 19.3 Remote Software Access

- (a) We will need to remote access your business' point of sale (POS) systems to enable us to gain full access when support or assistance is provided by us. It is your responsibility to ensure that the remote access connection is given the same consideration as the on-site connection to your business.
- (b) We will ask for approval from you for remote access prior to accessing your POS system. We will comply with the current EFTPOS industry codes, remote access practices, and technical procedures as part of our standards for remote access and compliance measures in the payment services ecosystem.
- (c) We will not use your POS system or networks to access the internet for outside business interests. You must ensure that the remote host POS systems are not connected to any other network at the same time, with the exception of personal networks that are under your complete control or under the complete control of any third parties.

## 19.4 Updates

We are not required to provide you with any update on our software. However, we shall endeavour to provide updates which we deem necessary for your continued use of the Pago Facility.

## 19.5 Third Party Point of Sale Software

We may work with third party software providers to enable certain point of sale features on the Pago Facility. You are responsible for ensuring that such features and functionality are compatible with your Pago Facility. Next is not liable for any losses that you may suffer from using such features.

# 20. Warranty

## 20.1 Warranty

We warrant that we have exercised commercially reasonable efforts to ensure that:

- (a) The Services will be provided to you with reasonable care and skill; and
- (b) At the date of delivery, the Pago Facility complies with its design and was manufactured in compliance with the requirements of the law.

## 20.2 Warranty Exclusion

To the maximum extent authorised by law, no other warranties in relation to the Pago Facility provided by us under these Terms except those mentioned above. Consequently, we disclaim and you agree to hold us free and harmless from any and all liability directly and/or indirectly arising from:

- (a) Any damage to the Pago Facility caused by anything beyond our reasonable control, including without limitation, any damage caused by a malfunction of any network on which the Pago Facility is used, failure on the part of the principal acquirer from whom we may obtain some or all of the Services from time to time, or such other damage or injury caused by or arising from any act or omission of any Communications Service; and
- (b) Delay in the installation or provision of the Pago Facility, commencement of the Services, or any loss you incur if the Pago Facility is not working or you are unable to process Transactions.

## 20.3 No Warranty

The Services are provided on an "as is" basis. Some or all the Services may be provided by third party providers. To the maximum extent permitted by law, we make no warranty that the Services (or any part of them) will be error-free or will run without interruption, or any other warranty regarding the provision of the Services.

## 20.4 Representations and Warranties

You represent and warrant that:

- (a) You have the right and capacity to agree to these Terms;
- (b) The person who agrees to these Terms on your behalf is properly authorised to do so, and
- (c) These Terms will be legally binding on you.

## 21. Security

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### 21.1 Your Confidentiality and Security Obligations

You must:

- (a) Not disclose, unless otherwise required by law, to any person other than us, any information relating to any Personal Identifiable Information relating to any Cardholder;
- (b) Not obtain a Cardholder's name or Card details to or from any person unless such information was acquired by you lawfully and in the course of lawfully processing a Transaction.
- (c) Comply with the User Guide and other security requirements stipulated on the Website or elsewhere from time to time;
- (d) Comply with the prevailing Payment Card Industry Data Security Standards found in [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org) or any other relevant Scheme security requirements;
- (e) Allow and/or grant us reasonable access to computer systems for purposes of conducting the necessary inspection and/or investigation on whether there has been a security breach and/or data compromise;
- (f) Not process a Transaction by keying the transaction details manually into a Pago Facility unless instructed to do so by the Terminal;
- (g) Employ reasonable measures to detect and prevent forged or unauthorised signatures or the unauthorised use of a Card as well as the use of a Card in any money laundering or other criminal activities; and
- (h) Notify us of lost or stolen Pago Facility within 24 hours of identification that a Pago Facility has been lost or stolen.

## 22. Records and Statements

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### 22.1 Recording Obligations

You shall ensure that you keep copies of all receipts produced by the Pago Facility, your books of account and records of all sales and Refund Transactions as required by law. You shall likewise furnish us copies of all the aforesaid records, receipts, and such other documents reasonably requested by us in connection with any Transactions.

### 22.2 Statements

We will provide you with a monthly statement wherein the amount of all Transactions processed in the previous month as well as your cost of accepting the same, inclusive of the fees we have charged you, are reflected. It is your responsibility to check and ensure that the amounts reflected therein are correct and accurate.

## 23. KYC Due Diligence and AML/CTF Obligations

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### 23.1 KYC and AML/CTF Due Diligence Obligations

In order for us to meet our obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and associated Rules (AML/CTF obligations), we are required to verify the identity of our merchants as well as certain information about their' beneficial owners.

You must ensure that, upon signing the Pago Merchant Application Form, you provide us with the appropriate personal identification (ID) as part of the Know Your Customer (KYC) and Know Your Business (KYB) due diligence procedural requirements under the AML-CTF regulatory regime. ID requirements will reflect the level of customer due diligence (CDD) undertaken and in some cases, enhanced customer due diligence (ECDD) will require more ID disclosures.

### 23.2 You acknowledge and agree:

- (a) We may, in our sole and absolute discretion delay, block, or refuse to process or settle any

Transaction without incurring any liability, if we suspect, for any reason, that an unlawful act has occurred;

- (b) In order to use and continue to use the Services, we may at any time request further information from you. If you do not provide the information as requested, or there is a delay in you providing this information we may not be able to provide you with access to the Services; and
- (c) We may disclose your personal information to a Credit Reporting Body (CRB) to verify your identity and obtain an assessment of whether the information you have provided us with matches the information provided by the Credit Reporting Body.

## 24. Privacy Policy

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Both parties agree to be bound by the principles set out in our Privacy Policy located at [www.pagoftpos.com.au/privacy](http://www.pagoftpos.com.au/privacy)

## 25. Personal Property Securities Register

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We have a security interest in the Pago Facility which is capable of perfection by registration under the *Personal Property and Securities Act 2009* (Cth) (PPSA) (the Pago Security Interest) and we may register the Pago Security Interest against you under the PPSA.

The Pago Security Interest is a purchase money security interest to the full extent that it can be under the PPSA.

You waive to the greatest extent possible your rights to be given verification statements and any other notice or document which we would, but for this clause, be required to give or issue to you under the PPSA.

You must do anything that we reasonably require to ensure that the Pago Security Interest is a perfected first-priority security interest in the Pago Facility.

Except as other expressly authorised by us in writing, you must not in any way grant or permit the grant of existence of any other security interest in respect of the Pago Facility or part with possession of the Pago Facility.

## 26. Dispute Resolution

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### 26.1 Step 1: Notice of Concern or Dispute

In case you have a dispute pertaining to your use of the Pago Facility, any billing concerns or any other matter covered by these Terms, except those relating to reports of unauthorised transactions on your Account, you must notify us through [support@pagoftpos.com.au](mailto:support@pagoftpos.com.au) the details of your dispute. We shall endeavour to resolve the said dispute in soonest possible time but in accordance with the provisions of clause 26.

### 26.2 Step 2: Mediation

Once notice specified in the preceding clause is received, we shall exert commercially reasonable efforts to conduct the appropriate investigation to resolve your dispute in the fastest means possible. We will notify you in writing of the outcome of our investigations, including how we propose to resolve your concern or dispute. If you do not agree with our proposed resolution or if your dispute remains unresolved, you may request that such dispute be resolved through mediation by serving upon us a written request for the same. In such instances, the parties agree that we shall mutually appoint a mediator. In case of disagreement, the mediator shall be the person appointed by the Chair of the Resolution Institute. The determination of the Mediator once appointed shall be final and binding upon the parties.

### 26.3 Step 3: Arbitration

If the dispute remains unresolved within a period of four (4) weeks or such other period agreed upon by the parties, if either party does not wish to have the dispute mediated, then either party may refer the dispute to the Chair of the Resolution Institute for the appointment of a graded arbitrator who will arbitrate the matter in accordance with the *Commercial Arbitration Act 1990* (Cth). Unless we agree otherwise, the place of arbitration will be Sydney, New South Wales. The outcome of the arbitration will bind the parties.

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## 27. Liability and Indemnity

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### 27.1 Liability and indemnity

Except to the extent caused or contributed to by us, you agree to indemnify and keep us indemnified from and against any liability, actions, claims, demands, damages, costs and expenses incurred or suffered by us arising from:

- (a) A breach of these Terms by you;
- (b) Any wrongful, willful or negligent act by you or any of your officer's employee agents or contractors, and
- (c) Any claims made by a third party (including any customer) in connection with goods or services or use of the Pago Facility.

### 27.2 Disclaimer and Exclusions

To the maximum extent permitted by law:

- (a) We give no condition, warranty or representation as to ownership, description, condition, merchantability, suitability or fitness (for a particular or any purpose) of the Pago Facility or the Services and no such term, condition or warranty will be implied;
- (b) All Terms (whether express, implied, oral, or otherwise) not expressly stated in these Terms are excluded; and
- (c) We will not be liable to you for any loss of profit, loss of revenue, loss of business opportunities, loss of reputation or goodwill or any indirect or consequential loss arising in connection with these Terms or the Services.

### 27.3 Limitation of Liability

Neither party shall be liable for any indirect, incidental, special, punitive or consequential damages, or any loss of profits and/or revenue. To the fullest extent permitted by the law, our maximum liability for any damages arising out of or related to these Terms, whether in contract or in tort, or otherwise, shall be limited to the lower of (a) One Thousand Dollars (\$1,000.00); and (b) the replacement of the Pago Facility.

### 27.4 Limitations are Subject to Law

Nothing in these Terms excludes, restricts or modifies any terms, conditions or warranties that are imposed or implied by any law, including the Competition and Consumer Act 2010 (Cth).

You acknowledge and agree that you are not acquiring the Pago Facility or the Services as a "consumer" as that term is defined in the Australian Consumer Law and that you are not and will not become a consumer during the Term.

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## 28. Force Majeure

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Neither party will be liable to the other for any failure or delay to perform its obligations under these Terms where such failure or delay is caused by events beyond its reasonable control, including industrial disputes, strikes, lockouts, acts of god, acts or threats of terrorism or war, failure of third-party services providers and government actions including declarations of Pandemic or similar health emergency ("Force Majeure"). However, the foregoing does not apply if the Force Majeure event is caused by a breach of these Terms by the non-performing party.

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## 29. Suspension of Services

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If we suspect that either of us or any person may suffer any loss or subject to fraud if we continue to supply the Services, we may, at our reasonable discretion, suspend the Service or any part thereof with or without notice. For avoidance of doubt, you agree that while the Services are suspended, we will not process any Transaction you submit. You further agree that we shall not be liable and that you shall hold us free and harmless for any loss or damage that you or any other third party may suffer as a result of the suspension of the Services under this Clause.

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## 30. Termination

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## 30.1 Termination for Cause by Us

We may terminate by notice in writing to you if:

- (a) You fail to maintain a bank account, a Direct Debit Request Service Agreement or you fail to remedy this failure within seven (7) days of a written notice from us; or
- (b) We are directed to terminate these Terms by any third party from whom we may acquire some of the Services, a Scheme Operator or Scheme member. This may occur, for example, where excessive multiple Chargebacks are processed to your account; you change your business and the industry category into which your business falls changes; multiple fraudulent transactions are processed to your account or any other matter that may put us, the principal acquirer, a Scheme Operator or a Scheme member into disrepute.
- (c) At our discretion or for any reason having provided you with thirty (30) days' notice.

## 30.2 Termination for Cause by Either Party

In addition to and without prejudice to or limiting any other rights and remedies available to a party at law or in equity, either party may, by written notice to the other party, terminate these Terms with immediate effect:

- (a) If the party reasonably believes that any person is committing fraud in connection with these Terms or any of the Services;
- (b) If the other party is in breach of any of these Terms and such breach is incapable of remedy, or has not been remedied within seven (7) days of receipt by that other party of written notice specifying the breach and requiring that it be remedied; or
- (c) if the other party is declared insolvent; makes, or attempts to make, any arrangement for the benefit of creditors; is the subject of any resolution or petition for winding up or judicial management (other than for the purpose of a solvent amalgamation or reconstruction); a receiver or manager of the other party is appointed, or an order is made or resolution passed for the liquidation of the other party (other than for the purposes of a solvent amalgamation or reconstruction), or in the event any similar action or proceeding is instituted relating to any of the foregoing and the same is not dismissed within fourteen (14) calendar days.

## 30.3 Termination for Inactivity

If you do not make a Transaction for a period of sixty (60) days either:

- (a) From the Commencement Date, or
- (b) From the date of the last Transaction,

we reserve the right to terminate these Terms.

## 30.4 Early Termination by You

- (a) If you terminate this Agreement before the end of the term specified in your Application other than in accordance with clauses 30.1 or 30.2, you will be required to pay a Cancellation Fee.
- (b) You acknowledge that the Cancellation Fee has been set as a true pre-estimate of the loss which we will incur as a result of your early termination and is intended to do no more than compensate us for the loss we will suffer as a result of the early termination.
- (c) The Cancellation Fee is the amount equal to 20% of the average last 3 monthly fees with a minimum of \$100 payable per month, multiplied by the number of months (including partial months) remaining in the term of your Agreement.

## 30.5 Obligations on Termination

Upon termination:

- (a) Your right to use the Pago Facility immediately ceases and the licenses granted under these Terms terminate;
- (b) You must return the Pago Facility to us;
- (c) All monies owed to us must be paid in accordance with these Terms; and
- (d) Without limiting paragraph (c), if the Pago Facility is not returned to us within thirty (30) days of the effective date of termination, we will debit the replacement cost of the Pago Facility from your



nominated account.

## 30.6 No Effect on Other Duties

Except as otherwise provided herein, termination for any reason shall not relieve or discharge either party from any duty, obligation or liability which was accrued as of the date of termination.

## 31. Notice

Except as otherwise provided in these Terms, each communication (including each notice, consent, approval, request and demand) under or in connection with these Terms:

- (a) Must be in writing;
- (b) Must be addressed as notified by that Party to each other Party from time to time;
- (c) Must be signed by the Party making it or (on that Party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that Party;
- (d) Must be delivered by hand or posted by prepaid post to the address, or sent by email in accordance with clause 31(b); and
- (e) Is taken to be received by the addressee:
  - a. In the case of prepaid post, on the fifth day after the date of posting;
  - b. In the case of email, at the time the email is received in the inbox of the recipient; and
  - c. In the case of delivery by hand, on delivery.

If the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

## 32. Promotional Materials

### 32.1 We will Supply Promotional Material

We will supply you with decals for the Cards that are accepted by the Pago Facility you are renting. We may supply you with other promotional material at our discretion.

### 32.2 What You Must Do

You agree to:

- (a) Prominently display, wherever reasonably directed by us, decals and other signs advertising the Services and Cards;
- (b) Not use any advertising or promotional material relating to Cards or the Pago Facility except as authorised by us;
- (c) In all your marketing and communications (including on your websites, marketing materials, advertising and other customer communications) give all payment methods equal or substantially similar logo placement and treatment in terms of payment flow, terms, conditions, restrictions or fees; and
- (d) Not mischaracterise, misrepresent or disparage any payment method or exhibit a preference for one or more payment methods.

### 32.3 Authority to use your Name and Logo

You authorise any third party with whom we provide integrated services to use your logo, name, address, phone number and merchant category in any directory of merchants participating in the relevant integrated services and you hereby grant such parties a non-transferable and non-exclusive licence to use your logo for the purpose of identifying you as a merchant that accepts the relevant form of integrated payment and for offers or promotions by that third party.

## 33. Changes to the Terms

### 33.1 Changes to these Terms

We may immediately vary these Terms if required by, or in order to comply with, any law, or in connection with, or as a result of, any changes to any laws, provided that we give you written notice of such variations



as soon as is reasonably practicable after making the variation. Notwithstanding the foregoing, we may (subject to law) change these Terms in our absolute discretion by giving you at least thirty (30) days written notice before the effective date of the change.

## 33.2 Changes and Waiver of Fees

The Fees specified in these Terms may be modified by us at our absolute discretion but subject to the extent authorised by law. We will serve a notice indicating the fee changes and the date when such changes shall take effect. We shall provide at least thirty (30) days before the effective date of the change indicated in the said notice. Your continued use of the Pago Facility after the effective date of a change in the Fees will constitute as your consent and agreement to be bound by the revised Fees. If you disagree with, or you do not want to be bound by the revised Fees, you may terminate these Terms in accordance with the provisions of clause 30.

## 34. General

### 34.1 Entire Agreement

To the extent permitted by law, in relation to its subject matter, these Terms:

- (a) Embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) Supersedes any prior written or other agreement of the Parties, whether written or oral.

### 34.2 Severability

If at any time a provision of these Terms is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction that will not affect or impair:

- (a) The legality, validity or enforceability in that jurisdiction of any other provision of these Terms; or
- (b) The legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of these Terms.

### 34.3 Survival

The following provisions of this Agreement will survive termination or expiry of this Agreement:

- (a) Clauses 19, 20, and 27; and
- (b) A provision of these Terms that is expressed or is obviously intended to survive termination or expiry of these Terms.

### 34.4 Assignment

You may only dispose of, declare a trust over or otherwise create an interest in your rights under this Agreement with the consent of us.

### 34.5 Governing Law and jurisdiction

This Agreement is governed by the law in force in New South Wales, and each Party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

### 34.6 Interpretation

In these Terms, unless the context requires otherwise:

- (a) A reference to a clause, schedule or exhibit is to a clause, schedule or exhibit of or to these Terms,
- (b) Where an expression is defined anywhere in these Terms, it has the same meaning throughout;
- (c) A reference to "law" means all laws, codes, guidelines and the like, including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by-laws, rules, regulatory principles and requirements, statutory rules of an industry body, statutory and mandatory codes of conduct, writs, orders, injunctions, judgements, Australian generally accepted accounting principles

- and industry-wide non-statutory rules or obligations in force from time to time;
- (d) A reference to dollars or \$ is to an amount in Australian currency; and
- (e) A reference to any party to these Terms or to any other document or arrangement, includes that party's legal personal representatives, substitutes (including any person taking by novation), successors and permitted assigns.

## Schedule 1 – Definitions

**Account** means your account referred to in clause 7.1.

**Application** means the application form submitted by you.

**Australian Consumer Law** means the Australian Consumer Law Schedule 2 of the Competition and Consumer Act 2010 (Cth).

**Business Day** means a weekday that is not a public holiday in New South Wales.

**Card(s)** means any debit, credit or prepaid card, regardless of its form, whether traditional card, virtual, part of a digital wallet or wearable device.

**Cardholder** means the person to whom a Card is issued at the account holder's request.

**Card Issuer** means the institution that provides the Cards to Cardholders.

**Chargeback** means a debit entry to your Account to reverse a credit previously made to your Account in the circumstances set out in clause 13.

**Commencement Date** means the date that we approve your Application.

**Communications Service** means all facilities, devices and network connections that allow for the capture and switching of Transactions via the Pago Facility by use of either an analogue or digital mobile telecommunication service, broadband internet, Wi-Fi service or similar telecommunication services.

**Direct Debit Request** means the direct debit request made of you and authority as contained in these Terms.

**Fees** means the fees set out in clause 3.1 payable by you to us and as may be varied from time to time in accordance with these Terms.

**GST** has the meaning given to that term in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Intellectual Property Rights** means all rights, titles and interests, wherever subsisting throughout the world and whether registered or not, in and to copyright, author's rights, neighbouring rights, protection for the contents of databases, the designs, patents, rights in inventions, works of authorship, data, designs, know-how, trade secrets, confidential information, trademarks, trade, business and domain names, logos, and goodwill, along with any other intellectual property and proprietary rights.

**Invalid Transaction** has the meaning given in clause 5.6.

**MOTO** means Mail Order/Telephone Order transactions which is a card-not-present transaction where the cardholder provides you with their order and payment details by mail, fax, or telephone.

**Pago Facility** means the Pago terminal device, charger base, cables and Pago Dashboard by which we facilitate you with merchant acquiring and transaction processing services as set out in these Terms.

**PPSA** means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it.

**Refund** has the meaning given in Clause 10 by which a previously processed Transaction is refunded back onto the previously processed Card.

**Scheme** means the Mastercard, Visa, American Express, EPAL card schemes and any other similar schemes provided that we facilitate transactions in relation to.

**Scheme Operator** means American Express (AMEX) or Japanese Credit Bureau (JCB).

**Services** means the merchant acquiring and transaction processing services that we will provide to you from time to time pursuant to these Terms.

**Transaction** means an electronic funds transfer initiated in connection with a Cardholder using a Card or information from a Card on a Pago Facility.

**User Guide** means the procedures and user guide(s) that set out (amongst other things) instructions on how to set up and operate the Pago Facility, as provided and updated by us from time to time.

**Valid Transaction** is any Transaction that is not an Invalid Transaction and is approved by us.

**Website** means [www.pagoeftpos.com.au](http://www.pagoeftpos.com.au) or any other site operated by us.



1300 999 850



[hello@pagoeftpos.com.au](mailto:hello@pagoeftpos.com.au)



[pagoeftpos.com.au](http://pagoeftpos.com.au)