This document sets out the standard terms and conditions for First Data Merchant Solutions Australia Pty Ltd ABN 51 115 245 531 (First Data) providing merchant facilities to its customer (Merchant).

The Merchant Agreement is comprised of

(a) General Terms;
(b) the Merchant Application Form signed by Merchant (Application);
(c) any additional documents listed in the Application (as and where applicable);
(together the Agreement).

If there are any inconsistencies in the documents forming the Agreement, the document listed higher in the list will prevail to the extent of such inconsistency.

1 EQUIPMENT AND GETTING STARTED
1.1 Site preparation and installation
(a) You will at your own cost prepare your site(s) for the Equipment and Services, including installation of any and all telecommunication and power supply lines, and services as necessary.
(b) Additional sites under this Agreement may only be added by agreement with First Data in writing.

1.2 Own equipment
If you provide your own Equipment:
(a) such Equipment has to be equipment approved by First Data and complying with all regulations, policies, systems, software and certification procedures specified by First Data from time to time;
(b) you are solely responsible for purchasing, leasing, maintaining, repairing and replacing your own Equipment, and you indemnify First Data against any losses, liabilities, damages and expenses arising out of the use of your Equipment;
(c) you must upgrade such Equipment (including any software) in the event of an industry or security standard change or where otherwise reasonably notified by First Data.

1.3 Supplied equipment
(a) If First Data provides you with Equipment then First Data will:
   i. supply such Equipment (Supplied Equipment);
   ii. maintain Supplied Equipment in accordance with section 1.5;
   iii. deliver and install the Supplied Equipment at the site designated by you in the Application;
   iv. be entitled to replace the Supplied Equipment with new equipment. If we replace any Supplied Equipment we will notify you of any additional amounts you may have to pay. You must discontinue use of any replaced Supplied Equipment as directed;
   v. retain all ownership and rights in and to the Supplied Equipment as well as associated manuals and card decals and promotional material.
(b) Upon installation of the Supplied Equipment, we will provide training, either online, face to face or by phone on the use of the Supplied Equipment to one delegate nominated by you. You are responsible (including all costs) for training your personnel and must not permit untrained personnel to operate the Supplied Equipment.
(c) You must allow First Data to upgrade the Supplied Equipment as required when industry or security standards change.

1.4 Use
You must:
(a) operate any Equipment in accordance with any Operating Procedures and technical manuals from the manufacturer;
(b) use Equipment only for the purposes contemplated by this Agreement;
(c) safeguard the Equipment from loss, damage, unauthorised use, misuse or theft;
(d) notify First Data immediately regarding any damage to or loss of Equipment;
(e) not lease or sublease the Supplied Equipment, or pledge, lend, create a security interest in, directly or indirectly create, incur, assume or allow to exist any other consensually or judicially imposed liens or encumbrances on the Supplied Equipment;
(f) not remove, disconnect, relocate, modify or in any way alter any Equipment without First Data’s prior written consent;
(g) display decals, advertising or signs First Data supplies in respect of the Services;
(h) pay the replacement value of any lost, stolen or damaged Supplied Equipment as notified by First Data. The loss, destruction, theft of or damage to the Supplied Equipment shall not relieve you from your obligations under this Agreement.

1.5 Maintenance
(a) If an item of Supplied Equipment appears to be defective, you must immediately call the First Data Help Desk. First Data will:
   i. provide general support, assistance and advice regarding the technical and operational feature of the Supplied Equipment; and
   ii. use best endeavours to identify and rectify faults in the Supplied Equipment including Software via remote access or on-site support and maintenance as First Data may deem appropriate.
(b) You must ensure that First Data or its agents may enter your premises at any time on reasonable notice to install, inspect the condition of, replace, repair or maintain the Supplied Equipment and any Software.

1.6 Software Licence
(a) First Data grants you a non-exclusive licence to use the Software in your operation of the Supplied Equipment for the term of this Agreement.
(b) You must not reproduce, communicate, modify or reverse engineer the Software.
(c) You must not give any third party access to the Software without First Data’s prior written consent. First Data consents to you giving our service provider access to the Software.

1.7 Remote Access Module (RAM)
Where you receive access to the Remote Access Module (RAM) to enable you to view your Transaction history and reports you agree:
(a) First Data retains the Intellectual Property Rights in RAM;
(b) You, your employees, agents and contractors will utilise RAM only for the purposes of you receiving the merchant acquiring services under this Agreement and in accordance with:
2.1 Exclusive provider
During the term of this Agreement, First Data will be your exclusive provider of the Services.

2.2 Transaction procedures
(a) You must follow all procedures and requirements relating to Card Transactions set out in this Agreement, including complying with the Operating Procedures and applicable Card Scheme Rules, as amended from time to time.
(b) To process transactions correctly:
   i. you must use your Equipment to process all transactions;
   ii. you must only process transactions if the Cardholder has received the goods or services from you, unless the Cardholder has agreed to receive them later;
   iii. you must not split a single sale into more than one transaction;
   iv. you must not process a transaction after receiving a decline response, and must stop accepting any Card as soon as First Data tells you to do so;
   v. you must not give a cash Refund for a Card purchase, and any Refund must go back to the same Card account used for the purchase transaction;
   vi. all details on the Sales Receipt must be true;
   vii. the transaction must not be subject to any dispute, set-off or counterclaim;
   viii. you must have no knowledge or notice of any fact or circumstances which would indicate that the transaction was fraudulent or not authorised by the Cardholder;
   ix. the transaction must be made in accordance with this Agreement, including any applicable Card Scheme Rules and Operating Procedures;
   x. the transaction must not be a payment for goods or services that violates federal, state or local law;
   xi. for eftpos Card transactions, at your discretion, provide the Cardholder with cash either with or without a purchase of goods or services from you, only when Authorisation is given;
   xii. you must not manually key a transaction should a Card not process correctly through your terminal; and
   xiii. you must process all transactions in Australian dollars except where you have been approved for Dynamic Currency Conversion (DCC).
(c) You may only provide cash out services for where authorised by First Data and in accordance with Card Scheme Rules. All cash out Transactions must:
   i. only be in Australian dollars;
   ii. must only be offered where the Cardholder and card are present;
   iii. only be offered in respect of eftpos Cards; cash advances are not permitted on any other Card type;
   iv. processed only using the cash out menu or facility on your Equipment;
   v. provide the whole cash out Transaction amount to the Cardholder without set off or surcharge.

2.3 Transaction records
You must:
(a) immediately provide First Data with your records, all information and assistance that First Data may reasonably require, relating to any Transactions;
(b) keep in a secure manner all Transaction records for at least 18 months from the date of delivery of the goods or services; and
(c) give First Data a clear and legible copy of any voucher or other Transaction record that First Data asks for (otherwise the Transaction may be charged back to you); and
(d) stop accepting Cards as and when notified to you by First Data.

2.4 Reoccurring Transactions
(a) Notwithstanding anything to the contrary, you may obtain and hold cardholder authorisation for all reoccurring Transactions and ensure that the relevant card is within current validity at all times.
(b) A Reoccurring Transaction is a Transaction you are authorized to make regular drawings on a Card at predetermined intervals (not to exceed one year between Transactions) with the Cardholder’s written authority.
(c) You may only store the following Cardholder information for the purposes of conducting reoccurring Transactions:
   i. PANs which have been rendered unreadable in compliance with PCI DSS;
   ii. Cardholder name;
   iii. Card expiry date; and
   iv. extended service code for smart cards where applicable.

2.5 Chargebacks
(a) If a Transaction is an Invalid Transaction as denoted in this clause 2.5, or otherwise constitutes a valid Chargeback in accordance with this Agreement and relevant Card Scheme Rules, First Data may in its discretion (as the context dictates and without a request or demand from a Cardholder):
   i. refuse to accept the Transaction; or
   ii. if the Transaction has been processed, at any time within two (2) years of the date of the Transaction, charge that Transaction back to the Merchant by debiting the Settlement Account or Fee Account or otherwise exercising any right under this Agreement.
(b) First Data may also refuse to accept or Chargeback any Transaction where:
   i. the Cardholder claims the Transaction is invalid or disputes liability for any reason;
   ii. you process a cancelled reoccurring Transaction;
   iii. the Cardholder asserts a claim for set off or counterclaim.
(c) A Transaction is an “Invalid Transaction” and may be subject to Chargeback if:
   i. the Card was not valid at the time of the Transaction (for example, the Card has expired, is not yet valid, or has been cancelled or revoked);
   ii. there is no signature on the Sales Receipt where required or the signature on the Sales Receipt is different to that on the Card;
   iii. the Cardholder did not participate in or authorise a Transaction;
   iv. you used replaced Supplied Equipment after being directed to discontinue such use;
   v. the Sales Receipt has been altered without the Cardholder’s authority;
   vi. the Sales Receipt is incomplete or was not presented to us within the relevant timeframe;
   vii. the Transaction is subject to dispute, set-off or counterclaim;
   viii. it was processed to your own Card;
   ix. Authorisation for the Transaction was declined for any reason;
   x. it represents the refinancing of an existing debt or the collection for dishonoured cheque;
   xi. It represents a transfer of funds not the supply of goods or services or is a Cash Related Transaction;
   xii. it is not entered into by you and the Cardholder or is submitted by any third party;
   xiii. you use a manual sales voucher in circumstances where your electronic terminal is operational. Any
manual sales vouchers must be forwarded to First Data within 3 days of the Transaction;

xiv. it is not processed in accordance with the Operating Procedures or any other term of this Agreement;

xv. you issue a credit which does not have a previous offsetting sale or

xvi. relates to or are in connection with, the sale of goods or services that are in contravention of the laws of Australia or are otherwise prohibited by First Data.

(d) If First Data receives a payment from a Cardholder relating to an Invalid Transaction that has been subject to a Chargeback, First Data will credit the Settlement Account with an amount equal to that payment, less any amount First Data is entitled to withhold or set off under the Agreement.

(e) Notwithstanding anything to the contrary, you acknowledge that a Cardholder is entitled to initiate a Chargeback of any Transaction where permitted in accordance with relevant Card Scheme Rules.

2.6 Anti-money laundering

We advise that Transactions may be delayed, blocked, frozen or refused where we have reasonable grounds they have breached Australian law or sanctions. You acknowledge and agree that we will not be liable for any loss suffered by you as a consequence of such action.

2.7 Surcharge

If you charge a fee for Transactions, you must:

(a) ensure the fee is valid under regulation and Card Scheme Rules;

(b) is clearly disclosed to a Cardholder before processing a Transaction;

(c) include any fee in the Transaction and not process it as a separate Transaction;

(d) indemnify First Data for any fines or costs associated with your noncompliance with regulation or Card Scheme Rules on surcharging.

3 SETTLEMENT OF CARD TRANSACTIONS

(a) First Data will only acquire and settle Transactions for Card types specified in your Application.

(b) You must keep one or more bank accounts (Settlement Account) at a financial institution, into and from which First Data can initiate credits and debits in connection with this Agreement.

(c) After presentation of a Sales Receipt pursuant to the Operating Procedures, First Data will in accordance with its standard settlement process in effect from time to time pay into your Settlement Account the value of all valid sales and cash out Transactions less any Refunds, Chargebacks, or other debits or monies paid into any Reserve Account. Where reasonably practicable, First Data shall endeavour to initiate a credit into your Settlement Account on the next Business Day after the day the Transactions are processed (which is the next Business Day if Transactions are submitted before merchant cut-off).

(d) First Data will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties such as a Card Scheme, your financial institution or any failure in the Australian payment system or telephone lines.

(e) For each month that you process a Transaction, First Data will send you a summary statement of Transactions processed using your merchant services that month.

(f) If you believe any adjustments should be made with respect to your Settlement Account(s), you must notify First Data within 45 days after any debit or credit is or should have been effected.

(g) You warrant that all information provided by you is true and accurate and acknowledge that First Data will rely on that information, including Sales Receipts.

4 CHARGE CARDS

(a) You authorise First Data to share information provided by you in and with your Application with American Express, Diners Club, JCB and any other Charge Card Company for any purpose, including providing and marketing services to you.

(b) We may program your terminal to accept Transactions by Cards issued by a Charge Card provider. You are responsible for advising us of any merchant number issued to you by the relevant Charge Card Company before any service can be initiated.

(c) Our only obligation to you in relation to any Charge Card Transaction is to send the Transaction details to the relevant Charge Card Company or entity which issued the Card.

(d) We make no representations and give no warranties whatsoever in relation to:

i. the credit worthiness of the person presenting the Charge Card;

ii. your arrangements with, or performance by, the Charge Card Company under your agreement with the Charge Card Company;

iii. the settlement of funds from Charge Card Transactions.

5 INFORMATION, PRIVACY, CONFIDENTIALITY

5.1 Cardholder information

(a) You acknowledge that Cardholder information derived from a Transaction (including the names, addresses and Card account numbers of Cardholders) is confidential and constitutes personal information defined in the Privacy Act 1988 (Cth).

(b) You will comply with all applicable Privacy Laws and the Payment Card Industry security requirements (as published from time to time, including on the Visa or MasterCard websites or as otherwise advised to you by First Data), and keep such information safe and secure. This obligation survives termination of this Agreement.

(c) If we determine that you are a level 1, 2 or 3 Merchant under PCI DSS, you must at our request validate your compliance with PCI DSS on an ongoing basis. You must complete such validation within 3 months of our notification to you.

(d) Without limiting the above, and unless otherwise permitted or required by law, you must:

i. only use Cardholder information for the purposes of authorising, completing and settling Transactions and resolving any Chargebacks;

ii. not provide (other than to us or if required to do so by law), sell, buy or exchange a Cardholder’s name or information in any form;

iii. use proper controls for all records containing Cardholder information, and limit access to selected Employees;

iv. send Card information across the internet or other networks only after encrypting or scrambling it, and protect access to Card information on the internet and other networks you use by password;

v. not retain or store Magnetic Stripe, PIN, Chip or track data after a Transaction has been authorised;

vi. do not send or otherwise make available Cardholder Information to anyone overseas; and

vii. after the period you need to retain the records has ended, destroy the records and any information in a way that ensures any card details are unreadable.

(e) You acknowledge that you do not own any information relating to and derived from Transactions (Transaction Data). During the term of this Agreement, you may only use, store, copy and disclose Transaction Data as necessary for the purposes of assisting us and the relevant Card Scheme to complete the Transaction, supporting any loyalty program associated with the Card or Services, providing fraud control services or for purposes specifically required by law. If you use any third party to handle Transaction Data, you must ensure those third parties handle that Transaction Data in compliance with laws and this provision of this Agreement.
(b) You authorise and consent to First Data sharing your information with its Affiliates and third parties engaged in the sales process, including sales agents, independent sales organisations and payment facilitators (which may be located overseas) in connection with this Agreement and in accordance with our privacy collection statement and privacy policy.

5.3 Financial and other information
(a) Upon request, you will provide us with quarterly financial statements and/or annual audited financial statements, prepared in accordance with generally accepted accounting principles.
(b) Upon request, you shall provide to us or our representatives reasonable access to your facilities and records for the purpose of performing any inspection and/or copying of your books and/or records deemed appropriate and otherwise allow First Data or a Card Scheme representative access after reasonable notice to your records to audit compliance with data security requirements, for example after a security intrusion.
(c) You must advise us immediately of any change in circumstances affecting your business including any Insolvency Event, Change in Control or change in business name, business address, legal status or other business details.
(d) First Data shall be entitled to request from you such further information as it may consider necessary to meet any anti money laundering and counter financing of terrorism obligations and where legally obliged to do so, we may disclose such information to law enforcement and other government agencies.

5.4 Confidential information
You agree to keep all First Data Confidential Information, including the terms of this Agreement, confidential.

5.5 Records
(a) You must retain in your possession (while complying with all security requirements) your books of account and records, including all Transaction information, vouchers and tally rolls and other information as required under this Agreement for at least 18 months following each Transaction.
(b) You must retain all financial information in relation to your business, including but not limited to annual balance sheets and cash flow projections.
(c) You must keep reasonable records about your compliance with this Agreement, including staff training and compliance with PCI DSS.
(d) You must provide us with access to the records referred to above in a timely manner following a request by us.

6 FEES

6.1 Fees
(a) You must pay First Data the fees for the Services as set out in your Application, as well as any additional fees or pricing set out in this Agreement (together the Fees).
(b) First Data will invoice you in arrears for the Services provided. You must pay each invoice within 14 days of the date of the invoice.
(c) You must keep a bank account (Fees Account) (which may or may not be the same as your Settlement Account) at a financial institution, from which First Data may collect Fees.
(d) If you do not nominate in your Application a Fees Account, the Settlement Account will be deemed the Fees Account and you authorise First Data to collect fees from the Settlement Account.
(e) You must provide upon request by First Data at any time a direct debit authority to enable First Data to debit your Fee Account with the Fees for the Services.
(f) You agree to reimburse First Data for the amount of any charges it incurs as a result of any debit to the Fees Account being rejected.

6.2 Fee adjustment
(a) The Fees for Services may be adjusted by First Data upon 30 days’ notice:

i. if the actual volume or average Transaction size are not as expected or otherwise represented by you in your Application over a period of at least 60 days;
ii. if you significantly alter your method of doing business;
iii. to account for any Additional Services or the provision for further Equipment; or
iv. to reflect any increases in associated costs by Card Schemes, government or regulatory bodies (such as in the case of interchange, assessments, taxes and other fees), or to pass through increases charged by third parties for on-line communications and similar items.

(b) First Data may also increase the Fees for any other reason by notifying you in writing 30 days prior to the effective date of any such change.
(c) First Data may charge additional fees for responding to specific requests from you for assistance such as providing extra statements, investigations of account activity requested by you, fees associated with dishonoured payments and fulfilling privacy requests. These additional fees may be charged on a time and materials basis or based on the cost of fulfilling such requests averaged across all merchants and represent additional work required to manage your account with First Data in respect of these requests, which are not part of the Services provided under this Agreement.

6.3 Referrals
You acknowledge that First Data may pay amounts to other third parties for referring you to First Data.

6.4 GST
(a) In this section 6.4 words and expressions which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act) have the same meaning as in the GST Act.
(b) Unless otherwise expressly stated, all consideration to be provided under this Agreement is expressed exclusive of GST. Where any charges are expressed to be inclusive of GST and the applicable GST rate changes, the charges will automatically be adjusted accordingly.
(c) If GST is payable by either of us on any supply made under this Agreement, you will, upon receiving a tax invoice from either of us, pay to the relevant person an amount equal to the GST payable on the supply.
(d) This amount will be paid in addition to, and at the same time, as the consideration for the supply is to be provided.
(e) You agree that either of us, as a recipient of supplies under this Agreement, such as but not limited to in the case of Refunds and other adjustments, may from time to time issue Recipient Created Tax Invoices and submit those invoices to the other. Those invoices will detail the GST applicable to the supply.

7 MERCHANT TRANSACTION LIABILITY

7.1 Indemnity
(a) You must indemnify and keep First Data indemnified against and must pay us on demand against all claims, actions, liability, suits, losses defaults, expense, costs (including legal costs and disbursements) and damages we may incur or suffer arising out of or in connection with:

i. a Transaction between you and any Cardholder;
ii. all Chargebacks including any foreign exchange difference between the value of an original Transaction and the amount of the Chargeback for a Transaction;
iii. any Invalid Transaction;
iv. any damage or loss to the Equipment;
v. you or any of your Employees processing a Transaction with wrong Transaction information;
vi. any error, negligence, wilful misconduct or fraud by you or your Employees;
vii. any dispute over goods or services between you and a Cardholder;
viii. any warranty or representation whatsoever in relation to any goods or services supplied by you;
ix. your failure to comply with any of your obligations under this Agreement;
x. any enforcement expenses under the Agreement, including any amount reasonably incurred by the use of our staff and facilities, in the event of a breach of the Agreement;

xi. fines, fees or penalties (including but not limited to Card Scheme fines) that we are required to pay as a direct or indirect result of your failure to observe any of the procedures, requirements or obligations under this Agreement.

(b) For the purposes of this clause 7.1, Liability means any debt or monetary liability or any other claim which can be reduced to or expressed as a monetary liability, irrespective of whether the debt or monetary liability is future, present, actual or contingent.

(c) Should you fail to pay any debt which you owe us we may commence enforcement action and report your default to a credit reporting agency, which may affect your credit rating and your ability to obtain commercial finance in the future.

7.2 Debits and set off
First Data may marshal and exercise its rights under any security it holds from you or in relation to your indebtedness in respect of your liability under this Agreement. First Data may:

(a) debit your Settlement Account;

(b) debit a Reserve Account established under clause 7.4;

(c) deduct and set off from settlement funds due to you; or

(d) invoice you separately for any of the following amounts:
   i. funds credited to your account in error;
   ii. Invalid Transactions (including Chargebacks and our related losses);
   iii. Fees;
   iv. fees and fines imposed by any Card Schemes resulting from exchanges or your Chargebacks or your acts or omissions;
   v. government charges; and
   vi. any other amounts then due from you to us, whether or not arising out of or related to this Agreement.

(e) First Data may also charge interest on amounts outstanding where there were insufficient funds in your account to satisfy the above amounts.

7.3 Security
First Data may from time to time request security from you or a guarantor to secure performance of your obligations under this Agreement. First Data agrees to do all things necessary to put in place enforceable security as requested by First Data.

7.4 Reserve account

(a) You authorise First Data to establish a account in its name with an Australian Deposit Taking Institution on the terms set out in this clause 7.4 (Reserve Account).

(b) First Data may, in its absolute discretion, require by notice to you, that the whole or a portion of the value of any Transactions payable to you be deposited into the Reserve Account.

(c) You irrevocably direct First Data to pay such funds into the Reserve Account upon receipt of a request from First Data. First Data will provide you with a record of any such funds deposited.

(d) You acknowledge that the obligation of First Data under this Agreement to settle Card Transactions will be fully discharged upon the crediting of the Transaction proceeds to either the Settlement Account or the Reserve Account and that any contribution to the Reserve Account is a separate Transaction between you and First Data.

(e) Any funds paid into the Reserve Account in accordance with paragraph (c) represent a debt owing by First Data to you and is not held by First Data on trust for you.

(f) You authorise First Data to set-off all or part of the monies held in the Reserve Account against any obligations you have to First Data under this Agreement including, without limitation, any obligation under clause 7.1 notwithstanding that this Agreement may have terminated.

(g) Monies held the Reserve Account will not accrue interest.

(h) First Data may, in its absolute discretion, repay to you all or part of any money held in the Reserve Account. Such repayment is not a waiver of First Data’s right to require further deposits by you into the Reserve Account.

(i) Within the greater of eighteen (18) months following termination of this Agreement or such longer period of time as is consistent with our liability for Transactions in accordance with the Card Scheme Rules, First Data will repay to you any moneys remaining in the Reserve Account.

8 TERM AND TERMINATION

8.1 Commencement
This Agreement commences:

(a) by First Data advising you in writing that it has approved your Application;

(b) by you:
   i. commencing to process Transactions;
   ii. taking delivery of any Equipment enabling the processing of transactions; or
   iii. if you are an eCommerce Merchant, by First Data issuing a MID to you.

8.2 Term

(a) This Agreement continues for the Initial Term as set out in the Application (unless terminated earlier in accordance with this Agreement).

(b) After the Initial Term, this Agreement will continue for additional periods of 12 months unless you or we give at least one month’s written notice prior to the expiration of any applicable term.

8.3 Termination by First Data
We may terminate this Agreement at any time and for any reason, including but not limited to the following:

(a) there occurs irregular, invalid or illegal Card sales by you, excessive Chargebacks or any other circumstances which, in our sole discretion, may increase our exposure to financial or security risk;

(b) we are notified that you or your directors appear in Visa’s National Merchant Alert Service (NMAS), MasterCard's Member Alert to Control High Risk (MATCH) list or any domestic or international sanctions list;

(c) there occurs any material change in your business, financial condition, business procedures, prospects, goods or services without notifying us and receiving our consent;

(d) your independent certified accountants refuse to deliver an unqualified opinion with respect to your annual financial statements and your consolidated subsidiaries;

(e) you suffer an Insolvency Event;

(f) you purport to assign this Agreement or there is a Change in Control in you or your corporate parent; or

(g) any of your representations or warranties in this Agreement are breached or are incorrect when made or deemed to be made;

(h) you breach any material term of this Agreement;

(i) we have reasonable grounds to suspect you have fraudulently processed Transactions or allows fraudulent Transactions to be processed using the Services;

(j) you are not compliant with PCI DSS.

8.4 Termination by you

(a) You may terminate this Agreement on 30 days’ written notice if:
   i. we commit a material breach of this Agreement;
   ii. we notify you of an increase in the Fees for Services or modification in the terms of this Agreement, which materially increases your obligations or diminishes your rights, and you provide notice of termination within 30 days of the date of such notice.

(b) You acknowledge and agree that you will be deemed to have terminated this Agreement if you have not processed any Transactions in at least 90 days.

(c) You acknowledge and agree that your continued use of our Services after the expiration of 30 days of notification...
of a change in 8.4(a)(ii) will be deemed acceptance of the increased fees for Services or modification of the terms, throughout the remaining term of this Agreement

(d) You agree that if you terminate this Agreement before the end of the term other than under clause 8.4(a)(i), you will pay the Early Termination Fee per year or part year remaining of the term for each of your MIDs. You and we agree that this amount is a genuine pre-estimate of the loss which we will suffer as a result of you terminating this Agreement early and does no more than compensate us for the loss we will suffer as a result of the early termination.

8.5 Termination by Card Schemes
You acknowledge that the Card Schemes may, under Card Scheme Rules, reserve the right to direct termination of this Agreement.

8.6 Consequences of termination or expiry
If this Agreement ends:

(a) all amounts payable under this Agreement become immediately due and payable in full on demand;
(b) you must not process any Transactions through us, and we have no further obligations to accept Transactions from you after the termination date;
(c) any rights and obligations of either of us which arose before the termination date will continue, including:
   i. your obligations to pay or reimburse us for any obligations associated with Transactions you have submitted to us; and
   ii. your responsibility for all Chargebacks, Fees, Refunds and adjustments resulting from Transactions processed under this Agreement and all other amounts then due or which thereafter may become due under this Agreement.
(d) we may advise the Card Schemes about your details and the reason we terminated this Agreement if we have terminated this Agreement. The Card Schemes may give this information to another financial institution if you apply for new card processing facilities. This information may then affect your ability to obtain another card processing facility.
(e) You must promptly deliver all Supplied Equipment (including all attachments and parts) and the Marketing Materials to First Data at your cost in the same operating order, repair, condition and appearance that the Supplied Equipment had at the time of its delivery to you (reasonable wear and tear excepted).

8.7 Return of supplied Equipment
In order to return Supplied Equipment, you must:

(a) i. call our Customer Service for the address of the location to send the Equipment;
   ii. include the following information within the shipping box:
      • Company name, trading name, complete address and phone number.
      • Name of person to contact if there are any questions.
      • Your Merchant Account Number.
      • Serial number of the terminal (found on the underside of the terminal); and
   iii. maintain proof of delivery documents for your records, and the serial number from the bottom of the terminal.
(b) For each item of Supplied Equipment that you fail to return to First Data in accordance with the above terms, you must pay First Data the Lost Supplied Equipment Fee. Alternatively, First Data may retrieve the Equipment from you and you authorise First Data to access your premises for that purpose.

9 FIRST DATA WARRANTIES AND LIABILITY

9.1 Warranties and representations
(a) To the extent permitted by law, First Data disclaim all representations or warranties, express or implied, made to you or any other person, including any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise of any Services, Equipment or any goods provided incidental to the Services provided under this Agreement.
(b) First Data’s liability in respect of representations and warranties that cannot be excluded under clause 9.1(a) is limited to the re-supply of the Equipment or the Services or the cost of resupplying the Equipment or the Services.

9.2 Limitations on liability
(a) In no event will First Data be liable for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages.
(b) To the extent permitted by law, First Data will not be responsible for any loss or damage suffered by a Merchant under the Agreement except for loss or damage directly caused by the negligence of First Data.
(c) Notwithstanding clause 10.2(b), First Data shall not be liable for any loss, expenses or damage whatsoever caused by:
   i. the failure for whatever reason of a Card or any Equipment or the system (including any communications, messaging, processing or other system) to function properly or at all; or
   ii. the acquisition by any person of information through any unauthorised electronic or other interception of communication on the system; or
   iii. the failure of any systems or equipment provided by you.
(d) It is your responsibility to ensure that you have other means available to accept payments if there is any malfunction of the Equipment or any system.
(e) To the extent First Data is liable under this Agreement, you acknowledge and agree that First Data’s cumulative liability for all losses or damages you may suffer arising out of or related to this Agreement will not exceed (i) $50,000; or (ii) the amount of Fees received by First Data pursuant to the Agreement for Services performed in the immediately preceding 12 months, whichever is the lesser.

10 FURTHER OBLIGATIONS

10.1 Assignment and subcontracting
(a) You must not assign or transfer your rights or obligations under this Agreement (including by way of a Change in Control or operation of law), or create any security interest in this Agreement, without obtaining our prior written consent.
(b) We may upon notice to you:
   i. engage one or more of our Affiliates, to provide the Services, including the provision of POS Terminals and other Equipment and local support functions in relation to this Agreement;
   ii. we may assign, novate or transfer this Agreement and our rights and obligations hereunder and/or may appoint an agent or subcontractor to perform our duties hereunder, in whole or in part, to any other third-party without notice to you.

10.2 Compliance with laws, regulations and rules
In performing its obligations under this Agreement, each party agrees to comply with all laws, regulations and rules applicable to it, including the Card Scheme Rules, and the ePayments Code.

10.3 Force majeure
Except in respect of your obligations under the Operating Procedures, no party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by:
(a) fire, flood, elements of nature or other acts of God;
(b) any outbreak or escalation of hostilities, war, riots or civil disorders in any country;
(c) any act or omission of the other party or any government authority;
(d) any labour disputes (whether or not Employees’ demands are reasonable or within the party’s power to satisfy); or
(e) except in respect of your obligations under clause 5.1(c), the nonperformance by a third party for any similar cause
beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment or delay or failure of a Card Scheme to pay settlement amounts.

10.4 Personal properties security act

(a) If we determine that this Agreement, a Transaction or any Security provided in connection with it contains or creates a security interest for the purposes of the Personal Properties Securities Act (PPSA) you agree to do anything (including obtaining consents, signing documents or supplying information) we consider necessary to:

i. perfect any security interest or otherwise provide effective security or control over the Equipment or other personal property over which we have a security interest;

ii. ensure that a security interest created under or connected with this Agreement is enforceable, perfects and otherwise effective

iii. to enable us to apply for any registration or give any notification so that the security interest has the priority we require;

iv. to enable us to exercise our rights in connection with any Equipment or other personal property over which we have a security interest;

v. to bind you and any other person intended to be bound under this Agreement;

vi. demonstrate your compliance with this Agreement.

(b) You agree that:

i. we may complete any document on your behalf;

ii. we may at your expense, apply for any registration or give any notification in connection with a security interest created or in connection with this Agreement

iii. you will not register any financing charge statement in respect of a security interest created under or in connection with this Agreement without our consent

iv. that we need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) and 132(4) of the PPSA;

v. that you may not exercise any rights under sections 142 and 143 of the PPSA;

vi. that neither we nor any receiver (or receiver manager) appointed by us need give any notice required under the PPSA;

vii. that you will not disclose or permit any party to disclose any information of the kind referred to in section 275(1) of the PPSA unless section 275(7)(b) or C of the PPSA applies.

11 GENERAL

11.1 Notices

(a) Except as otherwise specifically provided, all notices and other communications required or permitted under this Agreement, must be in writing and sent by mail, courier, facsimile or email:

i. if to you at your address appearing in the Application; and

ii. if to us at Level 11, 168 Walker St, North Sydney, NSW 2060, Attn: General Manager or as otherwise notified from time to time.

(b) Notices are deemed to have been given:

i. if sent by mail, on the third day after posting;

ii. if sent by facsimile machine, at the time and on the date specified in the transmission receipt produced by the machine from which it is sent stating that the facsimile has been sent in full; and

iii. if sent in any other manner, when actually received.

11.2 Consents

A party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

11.3 Amendment

We may vary any provision of this Agreement at any time by giving you notice in the time and form set out below:

<table>
<thead>
<tr>
<th>Form of Change</th>
<th>Notice period</th>
<th>Method of notification</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Fee (unless otherwise provided for in this table)</td>
<td>30 days in advance</td>
<td>In writing either by mail or electronically</td>
</tr>
<tr>
<td>Government, Card scheme or Equipment Charge</td>
<td>Where possible at least 7 days in advance, or otherwise as soon as reasonably practicable after the change</td>
<td>In writing either by mail or electronically, or through advertisement in a major newspaper</td>
</tr>
<tr>
<td>Any other change or variation.</td>
<td>At least 7 days in advance</td>
<td>In writing either by mail or electronically, or through advertisement in a major newspaper</td>
</tr>
</tbody>
</table>

11.4 Severability

The parties intend every provision of this Agreement to be severable. If any part of this Agreement is not enforceable, it is severed and the remaining provisions remain valid and enforceable.

11.5 Waiver

If First Data does not enforce a right for breach of this Agreement, this does not mean that we have waived our rights for that or any other breach.

11.6 Governing law

This Agreement is governed by 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.

11.7 Entire agreement

This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and supersedes any previous agreements and understandings.

11.8 No partnership

Nothing in this Agreement constitutes you and First Data as partners, joint venture parties or principal and agent, unless otherwise stated. You are not authorised to make any warranty or representation on behalf of First Data.

12 GLOSSARY

In addition to the terms defined throughout these General Terms, the following terms mean as follows:

Affiliates means any entity directly or indirectly controlled by First Data Corporation; for the purposes of this definition, "control" means: (a) the beneficial ownership of more than 50% of the issued shares of the party; or (b) the capacity to determine the outcome of decisions about the party's financial and operating policies in accordance with section 50AA of the Corporations Act 2001 (Cth).

Authorisation: The confirmation by the card Issuer that the card number exists and that enough funds are available to allow the Transaction to go ahead.

Business Day: A day other than Saturday or Sunday or public holiday in New South Wales.

Card: A payment card or any form factor that can be used to initiate a payment transaction as specified on the Application.

Cardholder: The individual whose name is embossed on a Card and any authorised user of such Card.

Card Scheme: Any entity formed to administer and promote Cards, including without limitation MasterCard International Inc, Visa International Inc, eftpos Australia Limited.

Card Scheme Rules: The rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Scheme.

Cash Related Transactions: A Transaction between you and a Cardholder where you sell items that are intended to be converted directly into cash, such as in the case of money orders, travellers cheques and foreign currency.

Change in Control: any of the following:

(a) the Merchant agrees to acquire or dispose of, or acquires or disposes of, a substantial asset or assets;
(b) a person (alone, through or together with their associates) acquires a relevant interest in 50% or more of the issued securities in the Merchant;

(c) the Merchant is or agrees to be controlled by a person who did not or was not entitled to control the Merchant on the date of commencement of this Agreement; or

(d) a person who has not appointed or is not entitled to appoint a majority of directors to the board of directors of the Merchant on the date of commencement of this Agreement does, or becomes entitled to, appoint a majority of directors to the board of directors of the Merchant.

For the purposes of the above definition:

(i) “agrees” means an agreement which is written or oral, express or implied, conditional or unconditional and includes an obligation for a party to use its “best” or “reasonable” endeavours;

(ii) “acquire”, “relevant interest” and “voting shares” have the meaning given to them in Chapter 6 of the Corporations Act 2001;

(iii) “control” has the meaning given to it in section 50AA of the Corporations Act 2001, except that it must be read as if it applied to an individual as well as an entity; and

(iv) “associate” has the meaning given to it in the Corporations Act 2001.

Chargeback: The reversal of a Sales Receipt (or other indicia of a Transaction) and reversal of any associated credit to your Settlement Account because a Cardholder or Card Issuer disputes the Transaction or which is required by the Card Scheme Rules or can be reversed under this Agreement.

Charge Card: A card issued by a Charge Card Company.

Charge Card Company: American Express Company, Diners Club International Ltd, JCB International Co. Ltd and any other such charge card companies agreed by the parties.

Confidential Information: Any information relating to the business of First Data or concerning the financial Transactions or affairs or the identity of a Cardholder or the details of a Transaction.

Credit Receipt: A document evidencing the return of merchandise by a Cardholder to a Merchant, or other Refund made by the Merchant to the Cardholder.

Employees: Employees, contractors, officers, agents and secondees.

ePayments Code: The ePayments Code developed by the Australian Securities and Investment Commission.

Early Termination Fee: The fee payable by Merchant for terminating the Agreement prior to expiry of a term.

Equipment: The POS Terminals and associated hardware, spare parts and replacement parts and software at the Merchant's premises through which electronic funds transfer can occur (including Supplied Equipment but excluding power outlets and telecommunications lines).

General Terms: The terms and conditions set out in this document, as amended from time to time.

Insolvency Event: Any of the following:

(a) an order is made or an application is made to a court for an order that a party be wound up; or

(b) an application is made to a court for an order appointing a liquidator or provisional liquidator or a liquidator or provisional liquidator is appointed in respect of a party; or

(c) a party enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any classes of its creditors, or it proposes a re-organisation, moratorium or other administration involving any of them;

(d) a party resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the other party or is otherwise wound up or dissolved;

(e) a party is or states that it is unable to pay its debts when they fall due;

(f) a party makes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a party; or

(g) anything analogous or having a substantially similar direct effect to any of the events specified in paragraphs (a)-(f) above happens under the law of any applicable jurisdiction.

Issuer: Cardholder's bank, or the bank which has issued a Card to an individual.

Magnetic Stripe: A stripe of magnetic information affixed to the back of a plastic Card.

Merchant: The party identified as “Merchant” on the Application. The words “you” and “your” refer to Merchant.

Merchant Category Code: A code used by credit card companies to categorize the business activities of merchants.

MID: A merchant identification number.

Operating Procedures: Any operating manual and information provided or otherwise made available to the Merchant by First Data from time to time, including operational procedures, instructions and other directives relating to Transactions, as amended from time to time or any Charge Card Company rules or Card Scheme Rules, industry regulations and any information identified as such on the First Data website accessible to the Merchant.

POS Terminal: A point of sale device placed in a merchant location which is connected to the First Data system via telephone lines and is designed to authorise, record and settle data by electronic means for all sales Transactions with First Data.

Privacy Law: The Privacy Act 1998 (Cth), any common law privacy obligations by which a party is bound and any industry code (whether voluntary or not) by which a party is bound.

Refund: The reversal of a sales Transaction in accordance with the Operating Procedures.

Sales Receipt: Evidence of a purchase of goods or services by a Cardholder from a Merchant using a Card, regardless of whether the form of such evidence is in paper, electronic or otherwise, and which conforms to Card Scheme Rules.

Services: The activities undertaken by First Data to authorise, process and settle all Card Transactions undertaken by Cardholders at the Merchant's location(s) in Australia, and all other activities necessary for First Data to perform the functions required by this Agreement for all Cards covered by this Agreement (including where applicable, the provision and maintenance of Supplied Equipment).

Security: Any guarantee, indemnity, bill of sale, mortgage charge or other security interest or any authority to appropriate or set off deposits which First Data may request the Merchant to provide under clause 7.3.

Software: All software, computer programs, related documentation, technology and processes embodied in or provided in connection with the Supplied Equipment.

Transaction: Includes a sales Transaction (being the supply of goods or services or both), a cash out Transaction, Refund, or Cash Related Transaction in which a Card or Card number is used and which is processed by the Merchant either manually or electronically.