

# Tyro Merchant Service Agreement - General Terms

November 2008

**This agreement is made up of two documents: the Application and these General Terms. They should be read together and become binding on both parties immediately on Tyro processing the first Card Transaction for a Merchant.**

## 1. Meaning of Words

The following expressions used in this Agreement have the following meanings:

**"Agreement"** means the Application, the Merchant Service Agreement and the Merchant Pricing Schedule as amended from time to time.

**"Application"** means the EFTPOS Application submitted by the Merchant to Tyro.

**"Authorised Floor Limit"** means the total value of sales or cash the Merchant is authorised by Tyro to make available to a Cardholder on any occasion on a particular Card without Tyro's consent, where the Card Transaction is not processed by an online Terminal, Tyro's Merchant Web Interface or Tyro's Voice Authorisation.

**"Card"** means a Debit Card or a Credit Card referred to in the Merchant Service Agreement or otherwise authorised by Tyro for use in Terminals for the purpose of initiating a transfer of funds through the EFTPOS System.

**"Cardholder"** means the person to whom a Card has been issued or a person who is authorised to use a Card.

**"Card Transaction"** means any transaction by a Cardholder using a Card including any Debit Card Transaction or Credit Card Transaction.

**"Chargeback"** refers to a transaction value that is debited to the bank account the Merchant maintains under this Agreement due to a Cardholder disputing a Card Transaction.

**"Charge Card"** means a charge card issued under any one of the American Express, Diners Club or JCB Charge Card schemes.

**"Communications Provider"** means a third party that provides a Communications Service to the Merchant.

**"Communications Service"** means a service which allows for the capture and switching of transactions via the EFT System by use of either a digital mobile telecommunication service, or broadband internet or similar telecommunication services.

**"Credit Card"** means a valid credit card issued by, and bearing as applicable the symbols of either Visa or MasterCard.

**"Credit Card Transaction"** means a transaction by a Cardholder using a credit card to access a line of credit.

**"DCC"** means dynamic currency conversion

**"DCC Services"** means Tyro's dynamic currency conversion services.

**"DCC Chargeback"** means a Chargeback resulting from a DCC Transaction.

**"DCC Recipient Created Tax Invoice"** means an invoice generated by Tyro on behalf of the merchant detailing DCC commission payable by Tyro to the merchant.

**"DCC Refund"** means a Refund resulting from a DCC Transaction.

**"DCC Services"** means Tyro's dynamic currency conversion services.

**"DCC Transaction"** means a Card Transaction utilising the DCC services.

**"Debit Card"** means a valid card that primarily accesses a demand deposit account of the debit cardholder.

**"Debit Card Transaction"** means a transaction by a Cardholder using a card to access funds in the Cardholder's deposit account.

**"EFTPOS System"** means the process where, on instructions transmitted through a Terminal, a Cardholder's bank account is debited and the Merchant's bank account credited or vice versa as the case may be:

(i) in relation to goods or services supplied or cash made

available by the Merchant to the Cardholder; or

(ii) with the amount of any refund in respect of goods and services supplied by the Merchant to the Cardholder.

**"Floor Limit"** means an amount for single transactions at specific types of merchant outlets and branches, above which authorisation is required.

**"GST"** means any tax on the supply of any goods, services, real or personal property or any similar tax.

**"Merchant"** means the person(s) named in the Application as the "Merchant".

**"Merchant Account"** means the account maintained by the Merchant pursuant to clause 11.

**"Merchant Service Agreement"** means these Merchant Service Agreement General Terms as amended from time to time.

**"Merchant Operating Guide"** means the procedures issued and re-issued from time to time by Tyro to the Merchant.

**"MOTO"** means mail or telephone ordering.

**"Personal Information"** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**"Privacy Law"** means all legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information.

**"Refund"** means the refunding of a previously processed Card transaction back onto the previously processed Card.

**"Terminal"** means the electronic terminal or terminals through which instructions may be given for the transfer of funds using the EFTPOS system.

**"Tyro"** means MoneySwitch Limited, trading as Tyro Payments, a company authorised under Section 9 of the Banking Act of 1959 to carry out banking business as a specialist credit card and debit card acquirer. It cannot take money on deposit.

## 2. Interpretation

For the purposes of this Agreement:

- a) Except in clauses 24 (a), (b) and (c) of this Agreement, all transactions to which reference is made in this Agreement are transactions by a Cardholder's use of a Card;
- b) Card Transaction information is presented by the completion and delivery of a print receipt recording the transaction or by any other form Tyro approves;
- c) A sale includes the supply of goods or the supply of services or both;
- d) A receipt signed by a Credit Card Cardholder is a sales voucher or credit voucher;
- e) A Cardholder's debt to the Merchant for a valid Card Transaction conducted by the Cardholder is extinguished by Tyro's payment for that transaction under clause 12 of this Agreement;
- f) The Merchant Operating Guide, the Merchant Service Agreement and any annexure referred to in this Agreement form part of this Agreement;
- g) The words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates;
- h) Where the Merchant consists of any two or more persons their obligations under this Agreement are joint and several; and

- i) The failure by either party to exercise any right under this Agreement does not mean that party has waived that right.

### 3. Parties' Undertaking

The Parties undertake to each other:

- a) to observe at all times the requirements for each party set out in the Merchant Operating Guide; and
- b) to execute any reasonable directions and authorities one party requires to give effect to any of the other party's obligations under this Agreement.

### 4. Cards and Terminals

The Merchant undertakes to Tyro:

- a) to use a Terminal to process every Card Transaction, unless the Terminal, the EFTPOS System or the Communications Service is inoperative;
- b) to authorise every Card Transaction at time of sale, unless the Terminal, the EFTPOS Supplier or the Communications Service is inoperable;
- c) to use reasonable care to detect forged or unauthorised signatures or the unauthorised use of a Card;
- d) not to process a damaged Card Transaction by keying the transaction details manually into a terminal unless instructed to do so by the terminal; and
- e) to use reasonable care to prevent the misuse of a Card as an instrument in money laundering activities.

### 5. Cards and Supply of Goods and Services

The Merchant undertakes to Tyro:

- a) to honor a Card tendered by a Cardholder for the payment of goods or services to be supplied by the Merchant to the Cardholder in accordance with this Agreement;
- b) to inform a Cardholder of the amount of any fee the Merchant charges the Cardholder for a Card Transaction over and above the price the Merchant would charge if the Cardholder paid cash for the transaction at a time that enables the Cardholder to cancel the Card Transaction;
- c) to establish a fair policy for giving refunds or exchanging goods for sales transactions and to give refunds by means of a sales refund transaction, not cash;
- d) to perform all obligations to a Cardholder in connection with a sale giving rise to a sales transaction prior to processing the sales transaction;
- e) if less than the full amount of any sale is included in any sales transaction, to obtain cash payment in full for the balance due at the time the sale is completed;
- f) not to make any warranty or representation whatsoever in relation to any goods or services supplied by the Merchant which may bind Tyro; and
- g) to establish a fair policy for the handling of MOTO sales so as to minimise the possibility of Cardholder disputes and the unauthorised usage of Cards.

### 6. Card Security

The Merchant undertakes the following to Tyro:

- a) not to disclose, give (other than to Tyro or unless required by law), buy, sell or exchange a Cardholder's name or Card details to any person, except where that information has been collected by the Merchant other than through the Card Transaction;
- b) not to transmit Card information across networks without encryption of the information;
- c) to protect access to Card information, if stored on computer systems used by the Merchant, by encrypting account numbers or using only part of the account number, and using passwords which are only known to

trusted and appropriate staff;

- d) to permit Tyro reasonable access to inspect the Merchant's computer systems to conduct an investigation on whether there has been a security breach and or data compromise under clause 6(b) and 6(c); and
- e) to comply with any reasonable requirements and requests by Tyro in regards to the Payment Card Industry Data Security Standard (see [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org) for more information).

### 7. Fees and Charges

- a) The Merchant agrees to pay Tyro in full without set-off or counterclaim and without any deduction in respect of taxes unless prohibited by law:
  - (i) fees and charges set out in the Pricing Schedule to this Agreement for use of the Terminals and conducting Card Transactions;
  - (ii) on demand, an amount equal to any fees, costs or expenses Tyro must pay an entity conducting a Card scheme under the rules of that scheme due to a Card Transaction not being a valid card transaction or being charged back to Tyro; and
  - (iii) the full costs of recovery of any amount owed to Tyro.
- b) Tyro will meet all costs (other than fees payable by the Merchant under this Agreement) associated with the processing of transactions through the EFT System.
- c) Tyro may introduce new fees and charges or change the fees and charges payable under this Agreement. If Tyro introduces new fees or charges, it will give the Merchant at least 30 days direct notice prior to the new fee or charge taking effect.

The Merchant may request a copy of the current fees and charges payable under this Agreement.
- d) Any State or Federal government taxes or charges payable in respect of credits or debits to bank accounts of the Merchant or Cardholders are to be paid or reimbursed by the Merchant or Cardholders respectively.
- e) The Merchant Service Fee on Credit Cards is calculated on the total dollar volume of any Credit Card Transactions made between the Cardholders and the Merchant. Any refunds of Credit Card Transactions will not be deducted from this total.
- f) The Merchant Service Fee on debit cards using an item rate is calculated on each Debit Card Transaction. Any refunds of Debit Card Transactions will not be deducted from this total.

### 8. Books of Account and Records

- a) The Merchant undertakes to Tyro:
  - (i) to retain in the Merchant's possession the books of account and records of the Merchant (including all sales and refund transaction information and signed Cardholder receipts) relating to a Card Transaction for the period of not less than eighteen months after the transaction;
  - (ii) to permit Tyro to inspect the Merchant's books of account and records retained under clause 8(a) (i).
- b) Tyro will make available to the Merchant each month a separate statement showing the amount of all Card Transactions under this Agreement during the previous month. It is the Merchant's obligation to check the statements to ensure the accuracy of the payments to and from the Merchant's account.

### 9. Set-off

Tyro may from time to time set-off any amount due for payment by the Merchant to Tyro against any amount due for payment by Tyro to the Merchant.

## 10. Off-line Transactions

For the processing of offline transactions the Merchant undertakes:

- a) to only do so if the Terminal, EFTPOS System or Communications Service is inoperative, the Tyro Merchant Web Interface is inaccessible and the malfunction has been reported to Tyro's Help Desk;
- b) to obtain prior authorisation through the Tyro Voice Authorisation for any sale or any Card Transaction in excess of the authorised floor limit and not split sales or Card Transactions, which would otherwise be in excess of the Authorised Floor Limit; and
- c) to capture the offline transaction:
  - (i) electronically on the Terminal if it is still operative and it is the EFTPOS System or Communication Service which is down for transactions that are within the Authorised Floor Limit; or
  - (ii) on paper in the absence of an operative Terminal or access to Tyro's Merchant Web Interface. These paper based transactions subsequently need to be entered into the Terminal or Tyro Merchant Web interface once available. This needs to take place within three business days. Such a transaction will only be authorised up to the Authorised Floor Limit.

## 11. Merchant Account

- a) The Merchant will maintain a bank account in the Merchant's name to which amounts payable by Tyro or by the Merchant under this Agreement may be credited or debited.
- b) The Merchant authorises Tyro to debit the Merchant's bank account maintained under this Agreement with:
  - (i) all fees and charges set by Tyro and notified to the Merchant;
  - (ii) the full amount of all sales refund transactions presented by the Merchant;
  - (iii) any over-credits made by Tyro in respect of Card Transactions due to errors or omissions;
  - (iv) any Chargeback of a Card Transaction;
  - (v) any amounts payable by the Merchant to Tyro in relation to DCC Chargebacks and DCC Refunds in accordance with clause 37.
  - (vi) any moneys paid by Tyro to the Merchant for Card Transactions where Tyro is investigating the validity of the transaction or the validity of a claimed Chargeback of the transaction;
  - (vii) any duties and taxes payable by the Merchant in relation to this Agreement;
  - (viii) any deficiency in a payment made by the Merchant disclosed in an audit or check by Tyro; and
  - (ix) any other moneys due by the Merchant to Tyro under this Agreement.
- c) Tyro has the right to withhold or suspend payment of any moneys that would otherwise be owing to the Merchant until it has concluded reasonable investigations into any claimed chargebacks or into the validity of any transactions processed by the Merchant.
- d) The Merchant agrees that the authorisation provided under clause 11(b) above continues despite termination of this Agreement.

## 12. Tyro Settlement Obligations

- a) Tyro will:
  - (i) accept all valid Card Transactions made by the Merchant under this Agreement; and
  - (ii) credit the Merchant's bank account maintained under this Agreement with the proceeds of all valid Card Transactions which are sales transactions. The credit is made:

(1) next business day for transactions processed by a Terminal on a banking business day provided settlement of all the Merchant's Terminals occurs either by a manual settlement initiated by the Merchant or an automated settlement initiated by Tyro's systems prior to 5am (EST); and

(2) as soon as practicable in any other case.

- b) In the event that the Card Schemes do not fulfil their settlement obligations for the valid Card transactions, Tyro will delay settlement to the Merchant until the Card Schemes fulfil their obligations.
- c) The Merchant acknowledges that authorisation of a transaction is not a representation by Tyro that the transaction is valid and acceptable or that the transaction is being conducted by a true Cardholder. The transaction may be subject to dispute or a Chargeback.

## 13. Card Transactions which are Not Valid

A Card Transaction shall not be valid if:

- a) the transaction it records is illegal;
- b) the signature or authority for completion of the transaction is forged, unauthorised, not signed where a signature was required or, in the case of a MOTO, the transaction is not authorised by the Cardholder;
- c) the Card is not current at the time of the transaction;
- d) the Card was used without the Cardholder's authority;
- e) the transaction did not originate from an act between the Cardholder and the Merchant;
- f) the Merchant has not retained the receipt for eighteen months from the date of the transaction or does not produce to Tyro the receipt within five business days of a request by Tyro for production of that receipt;
- g) it is a Credit Card Transaction and:
  - (i) it is not for the supply of goods or services to a genuine customer; or
  - (ii) it is for cash out on a credit card account or includes cash out on a credit card account; or
  - (iii) it represents a transfer of funds, not the supply of goods or services.
- h) it is a sales refund transaction and:
  - (i) no corresponding sales transaction exists for the Card on which the sales refund transaction is made or purported to be made; or
  - (ii) it represents the payment of wages/salary; or
  - (iii) it represents a transfer of funds; or
  - (iv) insufficient funds are available in the bank account the Merchant maintains under this Agreement to cover the refund amount.
- i) the Merchant failed to comply with all messages displayed on the Terminal in relation to the transaction;
- j) the transaction is split into two or more transactions on the same Card to avoid having to obtain prior authorisation (each transaction will be invalid);
- k) the Merchant has failed to observe this Agreement or the Merchant Operating Guide in relation to the transaction.

## 14. Chargebacks

Tyro may refuse to accept or having accepted may Chargeback any Card Transaction which is a sales transaction or a transaction by which the Merchant made cash available if:

- a) Tyro considers that the transaction is not a valid Card Transaction;

- b) The Cardholder disputes liability for any reason; or
- c) The Cardholder asserts a claim for set-off or a counterclaim.

Where Chargebacks exceed 1% of Merchant card turnover, Tyro may apply a processing charge for each Chargeback.

#### 15. Warranties

The presentation by the Merchant to Tyro of any Card Transaction information shall constitute warranties to Tyro:

- a) that all particulars furnished to Tyro are true;
- b) that the sales transaction or sales refund transaction is valid; and
- c) that the sale represented by the Card Transaction information is not subject to any dispute, set-off or counterclaim.

#### 16. Indemnity

The Merchant agrees to indemnify and keep indemnified Tyro against, and must pay Tyro on demand the amount of, all losses, liabilities, costs (including legal costs) expenses and damages incurred or arising in connection with any breach by the Merchant of its obligations under this Agreement or any breach of the Merchant's obligations under this Agreement by any of its officers, employees, advisers or contractors, or arising from any dispute between the Merchant and any customer in respect of goods or services or the use of the EFTPOS System, except to the extent that the dispute has arisen due to Tyro's act or omission, including where Tyro breaches the terms of this Agreement.

This indemnity is a continuing obligation and continues after this Agreement ends. It is not necessary for Tyro to incur expense or make payment before enforcing this indemnity.

#### 17. Promotional Material

Tyro will supply the Merchant with decals and insignias for the Cards. Tyro may supply the Merchant with other promotional material at its discretion.

The Merchant agrees to:

- a) display prominently wherever reasonably directed by Tyro decals and other signs advertising the EFT System and the Credit Cards; and
- b) not use any advertising or promotional material relating to the Credit Cards or the EFTPOS System except as authorised by Tyro.

#### 18. Terminal and Equipment

- a) Tyro will supply the Merchant with Terminals and other related equipment. Tyro may install these goods at its discretion (subject to charges). These goods remain the property of Tyro. The Merchant must not part with possession of these goods without Tyro's authority.  
Optionally, the Merchant can buy the Terminal.
- b) The Merchant must ensure that all equipment and materials installed and used by the Merchant as part or in conjunction with the EFTPOS System conforms to standards agreed to by Tyro. Tyro is not liable for any delays in installation or provision of a Terminal or commencement of the EFTPOS System.
- c) From time to time Tyro may supply the Merchant with a new or upgraded Terminal. The Merchant must return the old Terminal within 14 days of receiving the new or upgraded Terminal. If Tyro does not receive the old Terminal within 14 days, the replacement cost of the Terminal (as reasonably determined by Tyro) will constitute a debt due by the Merchant to Tyro and the Merchant authorises Tyro to deduct such amount from the Merchant Account without notice.
- d) Tyro warrants to the Merchant that:
  - (i) the Terminals and other related equipment are of

merchantable quality and are fit for the purpose for which they are being supplied; and

- (ii) the services provided by Tyro in conjunction with its provision of the Terminals and other related equipment will be rendered with due care and skill.

#### 19. Communication Service

- a) The Merchant will pay all costs involved with the provision of a Communication Service, including the ongoing rental of that service. Tyro is not liable for any delays in the connection of the Communications Service.
- b) The Merchant must ensure that any Communications Provider it appoints conforms to standards and requirements reasonably stipulated by Tyro from time to time.

#### 20. Maintenance of Terminals

- a) The Merchant must exercise reasonable care in the use, operation, protection, access to and security of the Terminal and related equipment. The Merchant must allow Tyro or its representatives access to the equipment at all reasonable times for maintenance or any other purposes. The Merchant or its representatives must not allow any person except Tyro to service or repair the Terminal.
- b) The Merchant is responsible for the insurance of the Terminal against any loss or damage to the Terminal arising from theft, vandalism, fire, flood, earthquake or misuse or neglect by the Merchant. Where the Merchant damages a terminal, Tyro may debit the cost of repairing or replacing the Terminal from the account the Merchant maintains under this Agreement. Tyro may choose whether to repair or replace the Terminal.
- c) Where the Terminal is owned by Tyro and/or used to process Card Transactions under this Agreement, Tyro will maintain the Terminal at its cost in circumstances of normal use or as otherwise agreed.

#### 21. Malfunction or Breakdown of Terminals or EFTPOS System

- a) The Merchant undertakes to notify Tyro immediately of any malfunction or breakdown of the Terminals or the EFT System or the Communications Service.
- b) Subject to the code of Banking Practice, the liability of Tyro to the Merchant under this Agreement will, at Tyro's discretion, be limited to the supplying of the services contemplated in this Agreement again or the payment of the cost of having such services supplied again.
- c) Tyro is not responsible for installing, operating or maintaining any third party applications the Merchant installs or has installed on the Terminal.
- d) In the event of the EFTPOS System not operating for any reason, the Merchant may use Tyro Merchant Web interface or Terminal or paper-based payment system in accordance with the Merchant Operating Guide.

#### 22. Training of Terminal Operators

- a) The Merchant will use and employ the Terminals only in the manner and for the purposes in accordance with the Merchant Operating Guide and not permit any untrained persons to operate or otherwise use the Terminals.
- b) The Merchant will use its best endeavors to ensure that those persons who operate the terminals review the Merchant Operating Guide and relevant information that Tyro may provide.

#### 23. Issuer Transaction Limits

Issuers of Cards may impose limits on the monetary amount

and number per day of transactions a Cardholder may effect with any Merchant through the EFTPOS System throughout Australia.

#### 24. Charge Cards

- a) Tyro may program the Terminals to accept transactions by a Charge Card issued under a charge card scheme in which the Merchant participates, provided the Merchant informs Tyro in writing of the Merchant's merchant number for that charge card scheme.
- b) Tyro's only obligation to the Merchant in relation to any Charge Card transaction conducted through a Terminal, is to transmit the particulars of the transaction to the person, body corporate or association conducting the scheme under which the Charge Card was issued.
- c) Tyro makes no representations and gives no assurances whatsoever in relation to:
  - (i) the credit worthiness of any person presenting a Charge Card; or
  - (ii) the performance of any agreement or arrangement between the Merchant and any person, body corporate or association conducting a charge card scheme.

#### 25. Creditworthiness of a Cardholder

Tyro does not guarantee any Cardholder's credit worthiness. The Merchant waives any right which the Merchant may have against Tyro by reason of any inferred representation or assurance from issuing of a Credit Card to a Cardholder.

#### 26. Term and Termination

This Agreement commences immediately on Tyro processing the first Card Transaction for a Merchant.

- a) The Merchant may terminate this Agreement by giving 30 days written notice to Tyro.
- b) Tyro may terminate this Agreement at any time without cause by giving written notice to the Merchant. Termination will be effective immediately.
- c) Termination of this Agreement does not affect any obligations incurred prior to termination.
- d) If this Agreement terminates, the Merchant authorises Tyro to disclose to any card scheme the fact that the Agreement terminated and the reasons for this Agreement terminating. The Merchant acknowledges that the information concerning termination of this Agreement will be available to any member of the card scheme(s) and may be used to assess subsequent applications for merchant facilities.

#### 27. Return of Equipment

- a) On termination of this Agreement, the Merchant must return to Tyro all Terminals and related equipment including without limitation all guides, stationary and promotional material supplied by Tyro to the Merchant ("**Equipment**").
- b) The Merchant authorises Tyro to deduct the replacement cost of the Equipment (as reasonably determined by Tyro) ("**Replacement Cost**") from the Merchant Account immediately on termination.
- c) Tyro will refund to the Merchant the Replacement Cost on receipt by Tyro of the Equipment in good order and condition.
- d) If Tyro is not successful in debiting the Merchant Account for the Replacement Cost, the Replacement Cost shall remain a debt due by the Merchant to Tyro until such time as Tyro receives the Equipment in good order and condition or full payment of the Replacement Cost.
- e) Without limiting any other provisions of this clause 27, the Merchant authorises Tyro to enter the premises where the

Equipment is kept and take possession of the Equipment without notice to the Merchant in the event the Merchant does not return the Equipment to Tyro within 14 days of termination.

- f) This clause survives termination of the Agreement.

#### 28. Notice of Change

The Merchant undertakes to immediately notify Tyro if there are any changes to:

- a) the details contained in the Merchant's application form for the facilities Tyro supplies under this Agreement;
- b) The ownership or control of the Merchant's business including any delegation by way of power of attorney;
- c) The nature of the Merchant's business;
- d) The Merchant's trading name, address or telephone number; or
- e) The Merchant's ability to meet liabilities as and when they fall due.

#### 29. Third Party Terminals

If the Terminal is to be supplied by a third party then the Merchant must:

- a) first obtain Tyro's approval to use the third party's Terminal;
- b) pay all costs and expenses relating to the installation and maintenance of the Terminal;
- c) inform Tyro prior to the Merchant's dispossession of the Terminal;
- d) comply with the terms of any agreement in relation to the Terminal.

The provisions of clauses 18(a), 18(b), 18(c), 20 and 21(b) of this Agreement do not apply insofar that a Terminal is supplied by a third party to the Merchant.

#### 30. Notices

Any notice must be in writing and signed on behalf of the person giving it. The notice may be:

- a) the details contained in the Merchant's application form;
- b) sent by prepaid post and is taken to be given on the date it would have been delivered in the ordinary course;
- c) sent by fax and is taken to be given on the date the machine from which the fax was sent produces a report indicating it was sent; or
- d) given by any other means permitted by law and the Code of Banking Practice.

#### 31. Assignment

This Agreement is binding on the parties, their executors, administrators, successors and assigns provided that the Merchant may not assign this Agreement without the prior written consent of Tyro. Tyro may assign its rights or novate its rights and obligations under this Agreement.

#### 32. Variation

Tyro reserves the right to vary the terms of this Agreement by giving the Merchant 30 days notice. Other than variations which introduce or increase fees or charges, the variation begins no earlier than the date on which Tyro notifies the Merchant by advertisement in the national media or local media or in writing to the Merchant. If Tyro introduces or increases a fee or charge, Tyro notifies the Merchant in accordance with clause 7(c) of this Agreement.

### 33. Privacy Law

- a) Each party agrees to comply with:
- (i) any Privacy Law by which it is bound; and
  - (ii) any other privacy requirement notified by the other party.
- b) Each party acknowledges that it does not rely on any information or representation supplied by the other party as advice regarding compliance with the Privacy Laws.
- c) Each party warrants that it is aware of the Privacy Laws which apply to it in respect of this Agreement, and also warrants that, after the enquiry, it is not aware of having breached any of those Privacy Laws.
- d) The Merchant agrees that Tyro may obtain from and disclose to any person who is a Card issuer or who is involved in any credit card scheme, information about
- e) The Merchant authorises Tyro to obtain from any card scheme information ("Merchant's history") relating to facilities the Merchant obtained or is obtaining from other suppliers.
- f) Tyro uses information about the Merchant's history and personal information about the Merchant, including information about the Merchant collected from third parties, for any one or more of the following purposes:
- (i) to assess and process the Merchant's application for facilities Tyro supplies under this Agreement;
  - (ii) to administer and manage the facilities Tyro supplies to the Merchant under this Agreement;
  - (iii) to facilitate Tyro's internal business operations, including fulfilling any legal requirements and systems maintenance and testing.
- g) The Merchant acknowledges and agrees that Tyro may disclose information about the Merchant that Tyro collects from the Merchant's application, the Merchant's history or conduct of the facilities Tyro supplies the Merchant under this Agreement, in the following circumstances:
- (i) to Tyro's external service providers (some of which may be located overseas) that provide services for the purposes only of Tyro's business, on a confidential basis.
  - (ii) to any person who is a card issuer, card scheme operator or otherwise involved in any credit card scheme, for any purpose relating to the operation of those schemes (for example, Visa, MasterCard and card fraud detection agencies).  
This information may include information about terminating facilities made available to the Merchant and the reasons for that termination.  
Another service provider may use this information (amongst other things) to determine whether or not to make facilities available to the Merchant; and
  - (iii) if the Merchant requests Tyro to do so or if the Merchant consents or where the law requires or permits Tyro to do so.

### 34. GST

- a) Tyro may increase the amount ("original amount") of any fee or other consideration payable by the Merchant which has not been specified to include GST by an additional amount so that the total amount payable by the Merchant is equal to the original amount plus the amount of any GST liability payable by Tyro on the total amount.

- b) The Merchant must pay at any time and in any manner requested by Tyro any amount which Tyro decides to be necessary to reimburse Tyro for any direct or indirect increase resulting from any GST or other taxes or duties in the cost to Tyro of:
- (i) making, maintaining, or administering; or
  - (ii) carrying on any business connected with the supply of any facilities provided under this Agreement.

### 35. Suspension of Merchant Facilities

Tyro may suspend the facilities it supplies the Merchant under this Agreement without notice to the Merchant, if Tyro considers Tyro could suffer a loss or be subject to fraud if it continues to supply the facilities. Tyro will inform the Merchant as soon as practicable after Tyro suspends the Merchant's facilities under this clause.

Whilst the facilities are suspended, the Merchant will not submit Card Transactions for processing and Tyro will not process any Card Transactions the Merchant submits.

### 36. Card Transactions Initiated over the Phone

- a) The Merchant undertakes to give the Cardholder the following information at the time of all transactions:
- The receipt number
  - The amount of the card transaction
  - The type of transaction, e.g. purchase, refund, credit
  - The card number; and
  - The Merchant's name
- b) On receiving a Mail/Telephone order where a VISA/MasterCard Card is the means of payment, a Merchant should have a written record of the following details:
- VISA/MasterCard Account Number
  - Expiry date
  - Full Name (as it appears on the card)
  - Full Address (home address only, no post office box)
  - Telephone Number
  - Details of Goods or Services
  - Price of Goods or Services
  - Delivery Instructions
  - Date of Transaction
- c) For Telephone ordering the Merchant is not required to obtain the Cardholder's signature and for Mail ordering the Merchant is not required to compare the Cardholder's signature with that on the Credit Card. A Merchant should attempt to reduce the risk to him/her to some degree by verifying the authenticity of the information given to him/her by the customer.
- d) Authorisation must be obtained on all VISA/MasterCard Mail/Telephone orders. The Authorised Floor Limit for all transactions is \$0.00. Authorisation may be obtained through the MOTO option on the terminal.
- e) Where there is going to be a delay of more than five days in dispatching the goods or providing services ordered by telephone, the Merchant should not process the transaction until the day of dispatch.  
For further assistance, please contact the Merchant Helpline on 1300 966 637.
- f) For goods to be shipped the Merchant may obtain a preauthorisation on any day up to 7 calendar days prior to the date the merchandise is shipped. This authorisation is valid if the amount of the sales transactions is within 15% of the authorised amount, provided that the additional amount represents shipping costs.

### 37. DCC Services

Where the Merchant has selected or requested DCC Services the following provisions will apply in addition to the other provisions set out in this Agreement:

- a) The Merchant will apply the currency rates and margins as dictated by Tyro from time to time in processing DCC Transactions to determine the amount (in AUD) to be deducted from the Cardholder's account ("**Customer Payment Amount**").
- b) The amount paid to the Merchant as a result of the DCC Transaction will be the Customer Payment Amount less any margin as determined by Tyro from time to time.
- c) The Merchant will be entitled to a commission on each DCC Transaction as advised by Tyro from time to time ("**DCC Commission**"). The DCC Commission will be paid by Tyro on the first business day after the end of each calendar month into the Merchant's account maintained pursuant to clause 11 of this agreement.
- d) On the first business day of each month, Tyro will generate a DCC Recipient Created Tax Invoice detailing commission payable to the merchant on DCC transactions conducted by the merchant during the preceding month. The merchant undertakes not to generate any other invoice relating to DCC commission payments.
- e) For DCC Chargebacks and DCC Refunds, Tyro will apply the currency conversion rate and margin applicable at the date of the DCC Chargeback or DCC Refund in calculating the amount of the DCC Chargeback or DCC Refund in the Cardholder's local currency ("**Reversal Amount**").
- f) If the Reversal Amount exceeds the Customer Payment Amount, the amount by which the Reversal Amount exceeds the Customer Payment Amount shall be deducted from and set-off against the DCC Commission payable by Tyro to the Merchant.
- g) In the event that the total DCC Commission payable by Tyro to the Merchant for a given month is less than the amount by which Reversal Amounts exceed Customer Payment Amounts in any given month, Tyro shall be entitled to debit the amount of the shortfall from the Merchant's account held pursuant to Clause 11.
- h) The Merchant agrees to always give the Cardholder a choice between accepting the transaction in AUD or the international currency offered before processing a DCC Transaction.

### 38. Governing Law

This Agreement is to be governed by and construed in accordance with the laws of New South Wales.

### 39. Code of Banking Practice

- a) The relevant provisions of the Code of Banking Practice apply to this Agreement, if the Merchant is an individual or a Small Business.
- b) In accordance with the Code of Banking Practice, on the Merchant's request, Tyro will make available to the Merchant information about:
  - (i) Tyro's obligations regarding the confidentiality of the Merchant's information;
  - (ii) Complaint handling procedures;
  - (iii) The advisability of the Merchant informing Tyro promptly if the Merchant is in financial difficulty; and
  - (iv) The advisability of the Merchant reading the terms and conditions applying to a banking service.

### 40. Medicare Australia Easyclaim (if applicable)

If the Merchant lodges a Medicare claim in a paper form (i.e. DB2 or equivalent), under section 20A of the Health Insurance Act 1973 (a 'bulk bill claim') using Medicare Easyclaim, the Merchant must:

- a) retain the assignment of benefit agreement signed by the patient for a period of at least 2 years from the date of service; and
- b) give that assignment of benefit agreement to Medicare Australia within 7 days of receiving a written request from Medicare Australia.