

Tyro Payments Limited ABN 49 103 575 042 AFSL 471951

Tyro EFTPOS Terms and Conditions/Merchant Service Agreement – General Terms

Effective: 25 November 2019

1.0 Agreement

These Terms and Conditions, along with the Application Form and the Privacy Statement and Consent constitute your agreement with us (“**Agreement**”). You agree to be bound by this Agreement on the Commencement Date.

We may also make additional material available for download or use that may have additional terms and conditions. All additional terms and conditions are incorporated into and are a part of this Agreement.

The Agreement governs your relationship with us regarding the Tyro Services and will apply to the exclusion of any inconsistent terms issued by you.

2.0 Important information

In addition to the terms of this Agreement, you must also comply with:

- a. the Merchant Operating Guide and the PCI DSS Requirements;
- b. any requirements that a Scheme imposes on us that relate to the Tyro EFTPOS Facility that we notify you about;
- c. any rules, policies and procedures relating to the Tyro EFTPOS Facility that we may publish or provide to you from time to time;
- d. any reasonable directions given by us; and
- e. all applicable laws, rules, regulations, directives, and governmental requirements relating to your business and the use of the Tyro EFTPOS Facility.

3.0 Equipment

You agree that:

- a. risk in the Equipment passes to you on delivery of the Equipment to the Delivery Address. From delivery of the Equipment, you are liable for any loss or damage to the Equipment or as a result of you doing something to the Equipment not contemplated by this Agreement, including the cost of repairing or replacing the Equipment at the Replacement Cost. If Equipment is altered or damaged after it has been delivered to you at the Delivery Address, we are authorised to debit the repair cost or the Replacement Cost from the Fee Account. We may choose whether to repair or replace Equipment at our discretion;
- b. we will deliver Equipment to you in accordance with the delivery quantity, Delivery Address and information stipulated in the Application Form. We may charge you any delivery and freight charges for the shipment of Equipment in our discretion;
- c. we will pay any insurance coverage in respect of the delivery of Equipment to you;
- d. you must notify us within forty-eight (48) hours after delivery of Equipment, of any claimed shortages or rejections in respect of the Equipment. To the maximum extent permitted by law, failure to give such notice of a claim will be deemed an acceptance in full of all Equipment delivered;
- e. you must not allow anyone to service or repair the Equipment and must return all Equipment to us to arrange repair;
- f. you must ensure that all Equipment complies with our security and other requirements;
- g. you will affix to the Equipment any label or sticker supplied by us in accordance with any instructions we give you, and will not do anything to remove or obscure that label or sticker;
- h. you are not permitted to use the Equipment with any other acquirer;
- i. we will provide you with reasonable assistance over the phone or electronically by explaining how to install software required to connect the Equipment to point-of-sale or practice management software that we support an integration for;
- j. you must ensure you maintain operating systems that are supported and that your systems are upgraded as necessary to ensure that Transactions can be initiated and processed;
- k. in respect of each particular Card for which you accept Transactions, you must ensure that your:
 - systems meet software requirements and services processes required by the relevant Scheme with respect to order handling and goods delivery or service provision as advised by us or the Scheme from time to time; and
 - cashier hardware and software (including where relevant Alipay “spot payment” scanner, physical circuits or networks) are in good operational condition and properly link to the relevant Scheme’s platform where relevant;
- l. some Transactions can only be initiated via your Integrated Software so if the relevant software is not functional for any reason, you may be unable to process Transactions;
- m. we are not responsible for installing, operating or maintaining any third party applications you install or have installed on Equipment or any of your devices or systems;
- n. security features on the Terminal can be enabled. Please contact us if you want more information on this. You must have your own internal procedures to manage security and prevent fraud in your business; and
- o. from time to time we may supply you with new, upgraded or repaired Equipment. If this occurs, you must return the existing Equipment within fourteen (14) days of receiving the new, upgraded or repaired Equipment. If we do not receive the existing Equipment within fourteen (14) days, we will, acting reasonably, determine an amount representing the reasonable value of the existing Equipment and that amount will be notified to you and will constitute a debt due by you to us and you authorise us to debit such amount from the Fee Account without notice. We will refund to you the amount we have debited on receipt

by us of the Equipment in good order and condition if the Equipment is returned within 12 months.

You will have no right, title, property or interest in the Equipment except as bailee and must not sublet, transfer, dispose of, grant a security interest over, permit a security interest to be registered over or otherwise deal with any rights or interest in the Equipment.

We grant to you a non-transferable and non-exclusive licence to use the Software solely for the purpose of us being able to supply the Tyro Services to you pursuant to this Agreement. Your licence to use the Software ceases immediately on termination of this Agreement. All copies of the Software, including all intangible and tangible elements, are our property (or our licensor's property if applicable) and no title to or interest in the Software or any part of it is transferred to you except as provided for in this Agreement. You must not loan out, grant sub-licenses to, encumber, sell or otherwise deal with the Software nor reverse engineer, decompile or disassemble the Software, make derivatives, modifications or translations of the Software or otherwise deal with the Software or Equipment.

We warrant that:

- a. any Equipment rented from us is of merchantable quality and is fit for the purpose for which it is supplied as at the date of supply; and
- b. the Tyro Services provided to you will be performed with reasonable care and skill.

We are not, to the maximum extent permitted by law, liable for any Loss (except for a Loss due to our fraud, negligence or wilful misconduct) which arises from or in relation to or is caused by:

- a. damage to the Equipment due to a dysfunction of any network on which the Equipment is used or the Communications Service;
- b. your use of the Equipment or Software otherwise than in accordance with this Agreement;
- c. the Equipment not integrating with your computer systems; or
- d. the Equipment not working or you being unable to process Transactions because of an act or omission of a third party (including an entity responsible for the supply of telecommunications or electricity or a Scheme or a member of or participant in a Scheme (such as the issuer of scheme cards)).

You must ensure that Equipment is:

- a. installed following our guides and procedures for installation of Equipment;
- b. used in accordance with the Merchant Operating Guide at all times and solely for the purpose for which it was designed and provided by us in connection with the Tyro Services; and
- c. not moved from the Delivery Address without our prior written consent.

It is your responsibility to:

- a. determine the specific location of installation of Equipment (within the Delivery Address) and to prepare the location in accordance with the specification set out in the Set Up Guide;
- b. ensure that you have internet access and supported and regularly upgraded operating systems;
- c. ensure you have sufficient electrical surge protection;
- d. exercise reasonable care in the use, operation, protection, and security of Equipment at all times;

- e. ensure that Equipment is stored safely and protected from theft, loss or damage and to insure the Equipment against any loss or damage to the Equipment arising from theft, vandalism, fire, flood, earthquake, misuse, neglect, or as otherwise required by us; and
- f. regularly check for evidence of tampering including skimming devices and confirm the identification number on the Equipment is correct. You must contact us immediately if you discover any evidence of or suspect.
- g. regularly check for evidence of tampering including skimming devices and confirm the identification number on the Equipment is correct. You must contact us immediately if you discover any evidence of or suspect that Equipment has been tampered with.

Where you request our assistance in relation to installing or operating your Equipment, we may offer to remotely access your computer system in order to help you using any program which we select ("**Purpose**"). This may include amongst other things changing your settings, conducting test transactions or downloading and running system tools. If you agree over the phone or via email to us doing this, you expressly agree to us accessing your systems for the Purpose and anything incidental to the Purpose. You acknowledge that we may have access to information including confidential, personal or sensitive information, data and records which are contained on or copied on your computer systems ("**Information**"). You authorise us to access, use and disclose any Information for the Purpose and you confirm that where Information has been provided by or is owned by any other person, you have that person's consent to our access, use and disclosure of that Information.

To the maximum extent permitted by law, we will have no liability for and will not be responsible for any Loss which arises as a result of, in connection with or in relation to our access of your computer systems as described above or your use of the Equipment except for a Loss that is due to our fraud, negligence or wilful misconduct.

You agree to indemnify and keep us indemnified against any Loss arising out of, in connection with or as a result of our access to, use or disclosure of the Information except for a Loss that is due to our fraud, negligence or wilful misconduct.

4.0 Transactions

You must:

- a. if processing a Transaction using the Tyro EFTPOS Facility, use a Terminal to process every Transaction, unless the Terminal, the eftpos System or the Communications Service is inoperative;
- b. perform all obligations to a Cardholder (including providing any goods or services) in respect of a Transaction prior to processing the Transaction;
- c. not split a single sale into multiple Transactions on the same Card or process lower Transaction values in order to obtain an Authorisation;
- d. not make any warranty or representation to a Cardholder regarding us or on our behalf;
- e. establish and maintain a prudent policy for obtaining and maintaining proof of Cardholder authorisation for MOTO sales so as to minimise the possibility of Cardholder disputes and unauthorised Transactions;
- f. clearly and prominently display any surcharge you charge for a Transaction over and above the price that would be charged if the Cardholder paid cash for the

sale in a manner that enables the Cardholder to cancel the Transaction;

- g. only charge a surcharge that accurately reflects your cost of accepting Transactions and not cross-subsidise across Schemes;
- h. ensure any Refund also includes any surcharge charged in the original Transaction. In the case of a partial Refund, the surcharge must be pro-rated;
- i. establish and maintain a fair policy for giving refunds or exchanging goods which complies with all applicable laws and Scheme rules and notify your customers of Scheme refund deadlines either in your after-sale service policy or on your invoices or receipts;
- j. give refunds by means of a Refund and not cash;
- k. not process Transactions in respect of any Prohibited Products;
- l. only use the Tyro Services for your own account, your own business purpose and must not make use of the Tyro Services for performing any commercial or non-commercial services for or on behalf of any third party;
- m. not process any Transaction using your own Card or any Card of your associates;
- n. not hold a Cardholder's PIN or passcode as part of a book-up arrangement;
- o. not compel, require or influence a Cardholder to pay for goods or services via a cash out Transaction; and
- p. not use the Tyro EFTPOS Facility to receive payment of a bond or security for potential damage to, destruction of or non-return of goods or property made available for hire.

Card issuers may impose limits on the monetary amount and number per day of Transactions a Cardholder may effect. You agree to comply with those limits.

The Terminals will be programmed to accept all Card Transactions which they are able to accept. If you do not wish to participate in any particular Scheme you must contact us and complete and return any forms we request.

For some Schemes, you are required to have a separate agreement with the Scheme operator and our only obligation in relation to a Transaction is to transmit the particulars of the Transaction to the Scheme operator under which the Card was issued. For these types of Transactions, we make no representation and give no assurances in relation to the performance of any agreement or arrangement between you and such entity.

If requested, you must inform us of your merchant number for all Schemes in which you participate.

We reserve all rights to route Transactions using networks we determine or to change the way we route Transactions without notice, for example, we may change the cost, infrastructure, system features. You can opt-in to Tap & Save by contacting us. Certain transactions are excluded from Tap & Save, for details refer to the FAQs at <https://help.tyro.com/s/article/Tap-Save-least-cost-routing-FAQs>. Some pricing structures are not eligible for Tap & Save. Tap & Save will become available from a date nominated by Tyro in its discretion. Tyro does not guarantee any cost savings by opting in for Tap & Save. You can turn off Tap & Save functionality at any time by contacting us.

We make no representations and give no assurances whatsoever in relation to the credit worthiness of any person presenting a Card.

You acknowledge that the authorisation or processing of any Transaction by us does not constitute:

- a. a representation or warranty from us that the Transaction is a valid transaction; or
- b. an assurance by us that the Transaction is free from risk of dispute or Chargeback.

As we do not supply your point of sale or practice management software, we are not liable for any error, delay, malfunction or failure caused or contributed to or initiated by your point-of-sale or practice management software.

You must promptly notify us of any malfunction or error of the Terminals, the eftpos System or the Communications Service. In processing offline Transactions you agree to:

- a. only do so if the Terminal, eftpos System or Communications Service is inoperative or is inaccessible and the malfunction has been reported to us;
- b. obtain prior authorisation through Tyro's Voice Authorisation Process for each Transaction; and
- c. capture the offline Transaction on paper and within three (3) Business Days enter the details of the offline Transaction into the Terminal or Tyro Portal.

You acknowledge and agree that processing offline Transactions is at your own risk.

In processing Transactions initiated by telephone you must give the Cardholder the following information at the time of all Transactions:

- a. the receipt number;
- b. the amount of the Transaction;
- c. the type of Transaction, e.g. purchase, refund, credit;
- d. confirm the Card details charged; and
- e. your trading name.

On receiving a MOTO, you must maintain a written record of the following details:

- a. Card number (the last four digits only);
- b. expiry date;
- c. full name of the Cardholder (as it appears on the Card);
- d. full address of the Cardholder (street address only, no post office box);
- e. telephone number;
- f. details of goods or services supplied;
- g. price of goods or services supplied;
- h. delivery instructions; and
- i. date of Transaction.

For MOTO Transactions where you are not required to obtain the Cardholder's PIN or signature and compare the Cardholder's signature with that on the Card, you must ensure that each person processing such a MOTO Transaction uses best endeavours to verify the authenticity of the information given to you by the customer.

You must obtain authorisation via the MOTO option on the Terminal for all MOTO Transactions regardless of the value of the Transaction.

Where there will be a delay of more than five (5) days in you dispatching goods or providing services ordered by telephone, you must not process the Transaction in respect of such goods or services until the day of dispatch. For further assistance, please contact Customer Support.

If goods are to be shipped, you may obtain a preauthorisation on any day up to seven (7) days prior to the date the goods are shipped. This authorisation is valid if the amount of the Transaction is within 15% of the authorised amount, provided that the additional amount represents shipping costs.

You must ensure you have sufficient funds in your Settlement Account or Fee Account to meet your Refund obligations for all Refunds you process and for all Chargeback obligations you have.

You warrant by processing any Transaction that:

- a. all information given to us in respect of that Transaction is true and correct;
- b. the Transaction is valid; and
- c. the sale in respect of the Transaction is not subject to any dispute, set-off or counterclaim.

You acknowledge that MOTO Transactions are riskier than other Transactions and more likely to result in a Chargeback. It is your responsibility to know and identify your customer. Each MOTO Transaction is at your risk.

5.0 Security

You must:

- a. not disclose (other than to us or unless required by law) or obtain a Cardholder's name or Card details to or from any person, except where that information has been lawfully collected by you other than through a Transaction;
- b. comply with all applicable user guides and other security requirements specified at www.tyro.com (including <https://www.tyro.com/solutions/payments/eftpos/features/security-and-fraud-protection/>) as published and amended by us from time to time;
- c. comply with the PCI DSS Requirements and any Scheme security requirements;
- d. permit us or our representative reasonable access to inspect your computer systems to conduct an investigation on whether there has been a security breach and/or data compromise;
- e. use reasonable care to detect forged or unauthorised signatures or the unauthorised use of a Card;
- f. not process a Transaction by keying the transaction details manually into a Terminal unless instructed to do so by the Terminal;
- g. co-operate with, implement required measures and provide information requested by either a Scheme or us in order to reduce risks generally including the risk of Invalid Transactions;
- h. use reasonable care to prevent the use of a Card as an instrument in money laundering activities;
- i. use reasonable endeavours to protect the security of passwords associated with your Tyro Services; and
- j. not:
 - voluntarily disclose passwords associated with your Tyro Services to anyone; and

- keep a written record of passwords associated with your Tyro Services on one or more articles likely to be lost or stolen simultaneously, without making a reasonable attempt to protect the security of the password.

You acknowledge that from time to time, we may implement processes, procedures and software to identify fraudulent Transactions in connection with your use of the Tyro EFTPOS Facility. You acknowledge and agree that these measures are designed to minimise the incidence of fraud or otherwise illegal Transactions, but do not guarantee that such Transactions are eliminated.

6.0 Records and Statements

You must:

- a. keep all Receipts, your books of account and records of all Transactions (both sales Transactions and Refunds) for a minimum period of eighteen (18) months;
- b. provide us with all Receipts and other records in connection with Transactions as requested by us; and
- c. permit us or our representative to inspect Receipts, your books of account and records of all Transactions (both sales Transactions and Refunds) on request.

We will make available to you each month a statement showing the amount of all Transactions processed by us for you during the month. It is your obligation to check the statement to ensure the accuracy of the payments to and from the Settlement Account and from the Fee Account.

7.0 Settlement

Subject to the remainder of this clause, we will:

- a. accept all valid Transactions made by you; and
- b. credit or instruct your bank to credit the Settlement Account with the proceeds of all valid Transactions,

within the following timeframes:

- a. no later than two (2) Business Days following the date the Transaction is processed by a Terminal as long as settlement of all your Terminals occurs either by a manual settlement initiated by you or an automated settlement initiated by our systems prior to 5am (AEST); or
- b. as soon as practicable in any other case.

Notwithstanding when we credit your Settlement Account, your bank will determine when it makes the instructed payment available as disposable funds in your Settlement Account.

If there is any delay by our counterparties in respect of a Transaction, we may delay settlement to you until that counterparty fulfils its obligations. We reserve the right to delay the payment instruction of any Transaction until we receive payment in respect of that Transaction.

If our counterparty in respect of a Transaction:

- a. fails to make a payment to us; or
- b. makes a payment to us that is less than the full value of the relevant Transaction,

for any reason and we have already credited the Settlement Account in respect of the relevant Transaction, you must immediately repay to us the amount of the shortfall. Without limiting any other recourse we may have, you authorise us to debit the shortfall amount (as reasonably determined by us) from the Fee Account.

You acknowledge and agree that our obligation to credit valid Transactions to your Settlement Account may from time to time be subject to other legal obligations binding on us to credit part or all of a valid Transaction to a third party, including the Australian Taxation Office and any other third party pursuant to an applicable law or legally binding order.

8.0 Settlement Account and Fee Account

For the duration of this Agreement you must maintain a Settlement Account to which amounts payable by us to you may be credited or any Refunds or Chargebacks may be debited.

You authorise us to debit the Settlement Account in respect of:

- a. the full amount of Refunds presented by you;
- b. any overpayments made by us;
- c. any Chargeback; and
- d. any amounts payable to us in relation to DCC Chargebacks and DCC Refunds.

You must maintain a Fee Account to which amounts payable by you to us may be debited. The Settlement Account and the Fee Account will be the same account unless you notify us otherwise. You must maintain the Fee Account for the duration of this Agreement and for at least one hundred and eighty (180) days after termination of this Agreement. You must not make any changes to the Fee Account without notifying us in advance.

You authorise us to debit the Fee Account in respect of:

- a. all fees and charges payable by you under this Agreement;
- b. any Scheme fines or penalties payable as a result of your breach of this Agreement or which we incur because of your actions or inactions;
- c. the full amount of Refunds presented by you if these cannot be debited from your Settlement Account;
- d. any overpayments made by us if these cannot be debited from your Settlement Account;
- e. any Chargeback if this cannot be debited from your Settlement Account;
- f. any amounts payable to us in relation to DCC Chargebacks and DCC Refunds if these cannot be debited from your Settlement Account;
- g. amounts paid by us for Transactions where we are investigating the validity of the Transaction or a claimed Chargeback of the Transaction;
- h. duties and taxes payable by you;
- i. any deficiency in a payment disclosed in an audit or check by us; and
- j. any other amounts due by you to us under this Agreement.

We have the right to withhold or suspend payment of all amounts that would otherwise be payable to you:

- a. where you owe us any amount under this Agreement (including fees and charges) until such amount has been paid; or
- b. until we have concluded reasonable investigations into any claimed Chargebacks or into the validity of any Transactions.

You agree that these authorisations continue despite termination of this Agreement.

9.0 Chargebacks

We may refuse to accept, or having accepted, may Chargeback, any Transaction if:

- a. we consider that the Transaction is an Invalid Transaction or the relevant Scheme determines that a Transaction is prohibited, unauthorised or fraudulent or otherwise determines not to pay us the value of the relevant Transaction for any reason;
- b. the Transaction is illegal;
- c. the Cardholder disputes all or any part of its liability for any reason; or
- d. the Card was not valid at the time of the Transaction.

You agree to provide us and the relevant Scheme with all relevant documentation and records relating to a Transaction that is the subject of a Chargeback, to enable us to fulfil our obligations to the relevant Scheme with respect to that Chargeback.

You acknowledge and agree that the relevant Scheme makes the final determination as to whether a Transaction will be subject to a Chargeback.

You agree to comply with our guidelines and procedures relating to chargebacks, available at <https://www.tyro.com/chargebacks-disputes-guide/>.

10.0 Promotional material

We may supply you with decals and insignias for the Cards accepted. We may supply you with other promotional material at our discretion.

You agree to:

- a. prominently display, wherever reasonably directed by us, logos, decals and other signs advertising Schemes and Cards;
- b. not use any Scheme or Card logo or decal for any purpose other than the purpose of indicating acceptance of the relevant Scheme or Card or, in the case of advertising or promotional material provided by us, except as expressly authorised by us;
- c. give all payment methods equal or substantially similar logo placement and treatment in terms of payment flow, terms, conditions, restrictions or fees;
- d. not attempt to influence or inhibit a Cardholder's decision in relation to the use of any payment method or encourage a Cardholder to use a particular payment method;
- e. not mischaracterise, misrepresent or disparage any payment method or exhibit a preference for one or more payment methods; and
- f. when you display or exhibit the payment methods that you accept, display all payment methods in an equal and positive manner, including on websites and in marketing materials, advertising and other customer communications.

You authorise any third party with whom we provide integrated services to use your logo, name, address, phone number and merchant category in any directory of merchants participating in the relevant integrated services.

You grant any third party with whom we provide integrated services a non-transferable and non-exclusive licence to use your Marks for the purpose of identifying you as a merchant that accepts the relevant integrated payment form and for offers or promotions by that third party.

11.0 DCC Services

If we provide DCC Services to you:

- a. the Terminal will display the amount payable by the Cardholder in AUD and also the relevant foreign currency amount for each DCC Transaction;
- b. the Cardholder must select whether to process the DCC Transaction in AUD or the applicable foreign currency, you must not influence this decision;
- c. we will settle the relevant DCC Transaction by crediting the Settlement Account with the AUD value of the Transaction;
- d. you will be entitled to a DCC Rebate which we will pay into your Settlement Account on the first Business Day after the end of each calendar month;
- e. on the first Business Day after the end of each calendar month, we will generate a DCC Recipient Created Tax Invoice detailing DCC Rebate payable for the preceding month. You agree not to generate any other invoice relating to DCC Rebate payments;
- f. for DCC Chargebacks and DCC Refunds, you will be required to refund the Cardholder the Transaction value at the currency conversion rate applicable at the date of the DCC Chargeback or DCC Refund. This means that you assume currency risk for these types of Transactions.

For the purpose of clause 11.0(e), we will issue you any DCC Recipient Created Tax Invoice within 28 days of determining the relevant DCC Rebate. You will not issue tax invoices in respect of the supplies included on the DCC Recipient Created Tax Invoice.

You confirm that you are registered for GST at the start of this Agreement (if you are required to be registered) and will immediately notify us if you cease to be registered for GST.

You will notify us if you cease to comply with the requirements or undertakings provided in this clause 11.0 or by any issue known to, or becoming known to you which would cause us not to qualify to issue the DCC Recipient Created Tax Invoices.

We confirm we are registered for GST at the start of this Agreement and we will immediately notify you if we cease to be registered for GST.

We will notify you if we cease to comply with the requirements or undertakings provided in this clause 11.0, or by any issue known to or becoming known by us which would cause us not to qualify to issue the DCC Recipient Created Tax Invoices.

It is important that where a mistake occurs in processing a DCC Transaction that you reverse the DCC Transaction rather than processing a DCC Refund. If you process a DCC Refund rather than a reversal, significant currency spread can occur which can result in you incurring a large liability.

If you process a DCC Refund or reversal or a DCC Chargeback occurs, you are required to repay to us an amount equivalent to the DCC Rebate paid in respect of the original DCC Transaction. In these circumstances, you authorise us to debit an amount equivalent to the relevant DCC Rebate paid in respect of the original DCC Transaction from your Settlement Account.

12.0 Medicare Easyclaim

If we provide you with the ability to process Medicare Easyclaim transactions via your Terminal:

- a. you must comply with all relevant legislation and government guidelines and requirements in relation to processing Medicare Easyclaim transactions;
- b. for fully paid accounts, we process the electronic claim to Medicare and where authorised, credit the Medicare rebate to the claimant. If you use the Terminal to process the claim, you must also process the payment via the same Terminal, except where the payment cannot be processed via the Terminal;
- c. in processing a bulk bill claim or part paid claim you must ensure that the claimant has assigned the right benefits to the relevant provider and retain evidence of the assignment of benefit in accordance with all relevant legislation and government guidelines;
- d. for bulk bill or part paid claims, we facilitate electronic claiming via the Terminal but do not provide settlement services. Medicare is responsible for processing such payments in accordance with its procedures;
- e. for bulk bill claims, you acknowledge that such claims may be subsequently rejected by Medicare and it is your responsibility to manage the payment process with Medicare;
- f. to the maximum extent permitted by law, we are not responsible or liable where a claim cannot be processed or is rejected or void for any reason;
- g. you must not process in-patient claims via the Terminal; and
- h. we may suspend or discontinue these services for any reason in our discretion (acting reasonably).

13.0 Allied Health Claiming

If we provide you with the ability to process allied health claims via your Terminal:

- a. you authorise us to register you with DXC Technology;
- b. you agree to comply with all terms, conditions and requirements of and to pay all applicable fees to DXC Technology;
- c. the Terminal will display the amount payable to you by DXC Technology or the relevant health fund (as applicable);
- d. we facilitate the electronic claim being provided to DXC Technology or the relevant health fund to be assessed and settled by DXC Technology or the relevant health fund (as applicable). We do not settle and are not responsible for any payments by DXC Technology or the relevant health fund to you;
- e. the remaining payment due by the Cardholder to you must be processed as any other Transaction using the Terminal; and
- f. you must not process in-patient claims via the Terminal.

14.0 Scheme Information

You acknowledge that we may obtain from and disclose to any person who is a Card Issuer or who is involved in any Scheme, information about you for any purpose relating to the operation of the Scheme. Our rights under this clause continue despite termination.

You authorise us to obtain from any Scheme, information relating to facilities you obtained or are obtaining from other suppliers. We use this information (including personal information about you), including information about you

collected from third parties, for any one or more of the following purposes:

- a. to assess and process your application for facilities we supply under this Agreement;
- b. to administer and manage the facilities we supply under this Agreement; and
- c. to facilitate our internal business operations, including fulfilling any legal requirements and systems maintenance and testing.

You acknowledge and agree that we may disclose information about you that we collect from the Application Form, the above information or conduct of the Tyro Services to any person who is a Card issuer, Scheme operator or otherwise involved in any Scheme, for any purpose relating to the operation of those Schemes. This information may include information about terminating facilities made available to you 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 you.

Schemes and other third parties to whom we disclose your information may also share your information with other third parties.

15.0 Prohibited Businesses and Activities

You must not:

- a. use the Tyro EFTPOS Facility in connection with any Prohibited Products (as they apply to the relevant Tyro Service); or
- b. use the Tyro EFTPOS Facility to engage in any business or activity relating to any Prohibited Products (as applicable to the relevant Tyro Service) or that is illegal or inappropriate, as determined by us in our sole discretion.

16.0 Modifications to Tyro EFTPOS Facility

We may discontinue, modify, or change the Tyro EFTPOS Facility or the Tyro Services, at any time with three (3) months' notice in advance. To the fullest extent permitted by law, we will have no liability or obligation to you with regard to any modifications or changes we make to the Tyro EFTPOS Facility or the Tyro Services.

17.0 Customer Support

We will provide you with support via email or telephone to resolve any issues relating to your use of the Tyro EFTPOS Facility. You are solely responsible for providing support to your customers for all issues relating to the products and services that you sell and the Transactions you process using the Tyro EFTPOS Facility.

18.0 Protecting Your Tyro EFTPOS Facility Information

You are responsible for all activities that occur through your Tyro EFTPOS Facility or through the use of your credentials, including the activities of others and regardless of whether such activities are authorised.

You agree to immediately notify us of any breach or unauthorised use of your Tyro EFTPOS Facility or credentials. We reserve the right to require you to alter your password if we believe your password is no longer secure. You are responsible for maintaining up-to-date and accurate information (including a current e-mail address and other required contact information) for your Tyro EFTPOS Facility.

19.0 Definitions

In this Agreement, unless the context requires otherwise:

"Additional Site Request Form" means the additional site request form lodged by you with us for the Tyro EFTPOS Facility (if applicable).

"Application Form" means the application form lodged by you with us for the Tyro EFTPOS Facility.

"Authorisation" means the response to you requesting our approval for a Card to be used for a Transaction, whether through the Terminal or otherwise.

"Business Day" means any day other than a Saturday, Sunday or day which is a bank holiday or public holiday in the State of New South Wales.

"Card(s)" means:

- a. a credit, debit, charge, purchase or other valid payment card issued by a member or affiliate of a Scheme on which the Scheme's Marks appear;
- b. a valid payment card capable of acceptance under the eftpos Mark issued by an Australian bank or financial institution;
- c. any valid payment card issued under any loyalty program;
- d. any other valid payment card issued by another entity which the Terminal is enabled to accept;
- e. a barcode or QR code (displayed on a device, a Terminal or point-of-sale system) issued by a Scheme (including together with a digital wallet) which a Terminal or point-of-sale system is enabled to accept; or
- f. any electronic derivation of any of the above.

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

"Chargeback" refers to a transaction value that is debited to the Settlement Account due to a Cardholder disputing a Transaction or a Transaction being an Invalid Transaction for any reason.

"Commencement Date" means the earlier to occur of:

- a. the date on which we process the first Transaction for you; or
- b. the date that is 7 days after shipping your Equipment.

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

"Consequential Damages" means any property damage, loss of use, loss of business, economic loss, loss of data or loss of profits.

"Customer Support" means our customer support team which can be contacted via the methods set out on our website.

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

"DCC Rebate" means a rebate on the AUD value of a DCC Transaction as set out in your Application Form or as notified by us.

"DCC Recipient Created Tax Invoice" means an invoice generated by us and issued to you in respect of the taxable supplies made by you in relation to the DCC Rebate pursuant to the GST Law.

“**DCC Refund**” means a Refund resulting from a DCC Transaction.

“**DCC Services**” means our dynamic currency conversion services.

“**DCC Transaction**” means a Transaction utilising the DCC Services.

“**DXC Technology**” means iSOFT Australia Pty Ltd (trading as DXC Technology) being the third party service provider through which we connect to health funds for allied health claiming services.

“**Delivery Address**” means the address specified in the Application Form as the address to which Equipment to be supplied by us is to be delivered which must be an address in Australia.

“**Direct Debit Request**” means the direct debit request set out in the Application Form and Additional Site Request Form or any other relevant form (if applicable) and signed by you, as amended from time to time.

“**Direct Debit Request Service Agreement**” means the direct debit request service agreement as set out in clause 22.0 of this Agreement.

“**eftpos System**” means the process where, on instructions transmitted through a Terminal, a Cardholder’s bank account is debited and your account credited or vice versa as the case may be:

- a. in relation to goods or services supplied or cash made available by you to the Cardholder; or
- b. with the amount of any refund in respect of goods and services supplied by you to the Cardholder.

“**EPAL**” means eftpos Payments Australia Limited ABN 37 136 180 366.

“**Equipment**” means the Terminal, any related equipment and any software you are required to download in order to process Transactions.

“**Equipment Fee**” means rental fee, service fee or swap out fee payable by you to us to hire the Equipment from us (as applicable) as set out in the Application Form or as notified by us and any delivery and freight charges as reasonably determined by us.

“**Fee Account**” means the bank account(s) that will be debited for fees and other amounts payable by you in relation to the Tyro EFTPOS Facility as elected by you in the Application Form or as otherwise nominated by you from time to time.

“**GST**” means any tax on the supply of any goods, services, real or personal property or any similar tax imposed under the GST Law.

“**GST Law**” has the same meaning as the definition of “GST Law pursuant to section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.”

“**Insolvency Event**” means any insolvency event and includes circumstances where:

- a. you are insolvent or insolvent under administration (as defined in the *Corporations Act 2001 (Cth)*);
- b. an administrator, liquidator, provisional liquidator, controller or any other insolvency official is appointed to you or any of your property;
- c. you commit an act of bankruptcy or become a bankrupt (as defined in the *Bankruptcy Act 1966 (Cth)*);
- d. you are deregistered for any reason;

e. you conceal, remove or transfer any part of your assets, with intent to hinder, delay or defraud your creditors, or transfer of any of your assets which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or

f. you are unable to pay your debts as and when they fall due or you threaten to cease payment to creditors.

“**Integrated Software**” means any integrated software provided by a Software Provider that is certified by us as being integrated with or any Tyro products.

“**Invalid Transaction**” means a Transaction:

- a. that is illegal under Australian or international laws or prohibited by Scheme rules;
- b. that relates to Prohibited Product(s);
- c. that is not authorised by the Cardholder (including a fraudulent Transaction or where a Receipt is not signed when a signature was required);
- d. that involves a Card that is not current at the time of the Transaction;
- e. that did not originate from an act between you and the Cardholder;
- f. in relation to which you do not retain Receipts and records for at least eighteen (18) months from the date of the Transaction or do not produce the Receipt and records to us within five (5) Business Days of a request by us for production of that Receipt and/or record;
- g. that is not for the supply of goods or services to a genuine customer as part of the business activities disclosed in your Application Form;
- h. that represents a transfer of funds, not the supply of goods or services (e.g. a remittance);
- i. that is a Refund:
 - where no corresponding sales Transaction exists for the Card on which the Refund is made or purported to be made or otherwise represents a transfer of funds;
 - which represents the payment of wages/salary; or
 - which represents the winnings or proceeds from any game of chance or lottery;
- j. where you failed to comply with any messages displayed on the Terminal in relation to the Transaction;
- k. which is a single sales transaction split into multiple Transactions on the same Card or which has been processed at lower Transaction values in order to obtain an Authorisation;
- l. you do not comply with your obligations under this Agreement, the Merchant Operating Guide or any other direction by us in relation to the Transaction; or
- m. you are unable to demonstrate the validity of the Transaction to our reasonable satisfaction.

“**Loss**” means losses, liabilities, costs (including legal costs and Scheme penalties), expenses and damages.

“**Mark(s)**” means trademarks, including registered and common law trademarks, trade names, service marks, logos, domain names and designations owned, licensed or used.

“**Medicare Easyclaim**” means the electronic process for electronic bulk billing and patient claiming.

“**Merchant Operating Guide**” means collectively the guides, manuals and documents published here: <https://www.tyro.com/guides/>.

“**MOTO**” means any card-not-present Transaction, including Transactions processed via mail order or telephone order.

“**PCI DSS Requirements**” means:

- a. the Payment Card Industry Data Security Standards (**PCI DSS**) which are developed and published by PCI SSC; and
- b. the PCI DSS requirements published by us, available at <https://www.tyro.com/pcidss-requirements/>,

in each case, as applicable to you.

“**PCI SSC**” means the Payment Card Industry Security Standards Council.

“**Personal Data**” means any information relating to an identified individual who makes a payment through the Tyro EFTPOS Facility or whose details you otherwise cause to be stored in the Tyro EFTPOS Facility systems (including but not limited to name, postal address, email address, telephone number, credit and debit card numbers and bank account numbers, or any other unique identifier specific to an individual that may be collected, stored or transferred in anticipation of, in connection with or incidental to making payments).

“**Privacy and Information Security Requirements**” means:

- a. all applicable laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the privacy, confidentiality, or security of Personal Data, including, without limitation, to the extent applicable, the *Privacy Act 1988* (Cth); laws regulating unsolicited email communications; laws regarding the use of cookies, web beacons, and similar technologies; security breach notification laws; laws imposing minimum security requirements; laws requiring the secure disposal of records containing certain Personal Data; and all other similar laws, rules, regulations, directives, and governmental requirements; and
- b. your own published policies relating to the collection, usage, sharing, and security of Personal Data.

“**Privacy Statement and Consent**” means the privacy statement and consent attached to the Application Form.

“**Prohibited Products**” means the products or activities described at <https://www.tyro.com/prohibited-products> as updated by us from time to time.

“**Receipt**” means a receipt including the following information about a Transaction:

- a. amount;
- b. date;
- c. type of Transaction;
- d. facility or facilities being debited or credited;
- e. information to enable us to identify you and the Transaction (but no information that identifies the Cardholder’s name or address);
- f. time;
- g. location of Terminal or other identifying information of the Terminal;
- h. reference number; and

- i. such other information about the Cardholder or the Transaction required by the relevant Scheme as notified by us to you from time to time.

“**Refund**” means the refunding of a previously processed Transaction back onto the previously processed Card.

“**Replacement Cost**” means the replacement cost of the Equipment as reasonably determined by us.

“**Scheme**” means the Mastercard, Visa, American Express, UnionPay, Diners Club, Discover, JCB, EPAL and Alipay schemes and any other similar schemes provided that we are a member of or facilitate transactions in relation to that scheme.

“**Set Up Guide**” means the set up guide relating to the Equipment provided by us.

“**Settlement Account**” means the bank account that will be credited for transactions processed through the Tyro EFTPOS Facility and which are payable by us to you or debited for any Refunds or Chargebacks as elected by you in the Application Form or as otherwise nominated by you from time to time.

“**Software**” means the software comprised in any Equipment supplied by us to you or any other software which we provide to you or permit you to access the Tyro Services.

“**Software Provider**” means the provider of any accounting, practice management, point-of-sale or other software that is integrated with Tyro products.

“**Tap & Save**” means contactless debit card Transactions routed through the Scheme network that is the least cost to you.

“**Terminal(s)**” means the electronic terminal or terminals supplied by us through which instructions may be given for the transfer of funds using the eftpos System.

“**Transaction**” means any transaction by a Cardholder using a Card or information from a Card.

“**Third Party Site**” means any third party content and links to third party sites that are completely independent of us and not owned or controlled by us.

“**Tyro Confidential Information**” includes those portions of the Tyro Services that we do not make publicly available and all information that:

- a. gives us a competitive business advantage, gives us the opportunity to obtain a competitive business advantage, or the disclosure of which could be detrimental to our interests; or
- b. which is either (i) marked “Confidential,” “Restricted,” “Proprietary Information,” or other similar marking, (ii) known to be considered confidential and proprietary, (iii) received under circumstances reasonably interpreted as imposing an obligation of confidentiality,

but does not include:

- a. information that, at the time it is disclosed, is already in your rightful possession or available to you or your representatives from any other source having no obligation not to disclose it;
- b. information that is, or any time becomes, available to the public without any breach of obligation not to disclose it; or
- c. information that is developed independently by you without reliance on any of Tyro Confidential Information.

“**Tyro EFTPOS Facility**” means the facility under which we provide you with merchant acquiring and transaction processing services.

“**Tyro Portal**” means the online portal that we provide to you to access the Tyro EFTPOS Facility.

“**Tyro Services**” means the services to be provided to you by us under this Agreement, including the Tyro EFTPOS Facility.

“**Voice Authorisation Process**” means the process of obtaining voice authorisation for a Transaction via Customer Support.

“**we**”, “**us**”, “**our**” and “**Tyro**” means Tyro Payments Limited ACN 103 575 052 AFSL 471951 who is the issuer of the Tyro EFTPOS Facility.

“**you**” and “**your**” means the person or persons in whose name the account is held and includes your successors and assigns.

20.0 Interpretation

Unless qualified by or inconsistent with the context:

- a. a reference to a person includes an incorporated body or other association of persons or a governmental agency and vice versa;
- b. the singular includes the plural and vice versa;
- c. where a party comprises more than one person, this Agreement applies to all of them together and each of them separately;
- d. a reference to costs includes legal costs on a full indemnity basis;
- e. the approval or consent of a party means that party's prior written approval or consent which is not to be unreasonably withheld or delayed. Similar expressions have corresponding meanings;
- f. wherever “include” or “for example” or any form of those words are used, they must be construed as if they were followed by “(without being limited to)”; and
- g. if the day on or which a person must do something under this Agreement is not a Business Day, the person must do it on or by the next Business Day.

21.0 Fees and charges

We may introduce new fees and charges or change fees and charges - see clause 23.0.

You may at any time request a copy of the current fees and charges payable. To the maximum extent permitted by law, there is no maximum limit to those fees and charges. If a law applies to such a change we will comply with such law. We may in our absolute discretion waive any fees and charges from time to time or impose a lower fee or charge.

You agree that if you rent Equipment from us, you will pay the Equipment Fee from the Commencement Date. You direct and authorise us to debit the Equipment Fee from the Fee Account. Separate amounts may be payable where you purchase items ancillary to your Equipment from us. We will advise you of the purchase price of any ancillary products when you purchase them.

You agree to pay us in full without set-off or counterclaim and without any deduction in respect of taxes unless prohibited by law:

- a. any amount due to us under this Agreement;
- b. on demand, an amount equal to any fees, costs or expenses that we must pay to an entity conducting a

Scheme or another participant in the Scheme under the relevant Scheme rules due to a Transaction being an Invalid Transaction or being charged back to us, or otherwise in respect of a Transaction or as a result of an action by you; and

- c. the reasonable costs we reasonably incur in the recovery of any amount that you owe to us under this Agreement.

The Application Form (or any notice of change of pricing which we may give) discloses fees for each category of Transaction. You may at any time request a copy of the current fee information. We may change the Transactions that fall within each category or change the categories (including by introducing new Transactions or categories) - see clause 23.0.

We may in our discretion apply an alternative fee arrangement where you pay to us the actual cost of, or our best estimate of the actual cost of, each Transaction charged by the relevant Scheme in addition to a margin determined by us.

For some Schemes, where you are required to have a separate agreement with the Scheme operator and our only obligation in relation to a Transaction is to transmit the particulars of the Transaction to the Scheme operator under which the Card was issued, we will charge a switching fee as set out in your Application Form or otherwise notified to you. You will need to pay all Scheme fees and charges direct or pay us any Scheme fees which we must pay in relation to the Transaction.

We charge a surcharge for MOTO Transactions as set out in the Application Form or as otherwise notified to you.

For Transactions utilising the Alipay Scheme, we will charge you a service fee as set out in your Application Form, application or agreement to use the Alipay services or as otherwise notified to you.

Unless otherwise expressly stated, all amounts specified in this Agreement are GST exclusive amounts. If GST is imposed on any supply made by one party (“**GST Supplier**”) to the other party under this Agreement, the recipient of the supply (“**Recipient**”) must pay, in addition to any consideration payable under this Agreement for the supply, an additional amount for the supply calculated by multiplying the prevailing GST rate by the consideration for the relevant supply provided always that the GST Supplier issues a valid tax invoice to the Recipient after the occurrence of any event that causes the GST liability of the GST Supplier on any taxable supply to the Recipient to be attributed to a particular tax period.

We will meet all costs (other than fees payable by you under this Agreement) associated with the processing of Transactions.

Any government taxes or charges payable in respect of credits or debits to the Fee Account or the Cardholder's account must be paid or reimbursed by you or the Cardholder respectively.

22.0 Direct Debit Request Service Agreement

By signing the Direct Debit Request, you authorise us to debit funds from your:

- a. Fee Account in any of the circumstances set out in the Direct Debit Request Service Agreement contained in this clause 22.0 and clause 8.0;
- b. Fee Account from time to time for any amounts payable or owing by you under this Agreement; and
- c. Settlement Account in any of the circumstances set out in the Direct Debit Request Service Agreement

contained in this clause 22.0 and clauses 8.0 and 11.0.

If the due date for a debit to your Fee Account or Settlement Account falls on a day which is not a Business Day, we will debit your Fee Account or Settlement Account (as applicable) on the next Business Day. If you are uncertain as to when the debit to your Fee Account or Settlement Account will be processed, you should contact the financial institution with whom the Fee Account or Settlement Account is held.

It is your responsibility to ensure that:

- a. the account details of the Fee Account and Settlement Account are correct by checking them against a recent account statement issued by the financial institution with whom the Fee Account or Settlement Account is held;
- b. if you have queries about completing the Direct Debit Request you should contact the financial institution with whom the Fee Account or Settlement Account is held;
- c. the Fee Account and Settlement Account can accept direct debits (as direct debiting may not be available on all accounts offered by financial institutions);
- d. the Fee Account and Settlement Account has sufficient cleared funds available to enable the direct debits authorised by the Direct Debit Request to be made from time to time; and
- e. the authority given to us to draw on the Fee Account and Settlement Account is consistent with the account authority or signing instructions held by the financial institution in which the Fee Account or Settlement Account is held.

If there are insufficient clear funds in the Fee Account or Settlement Account to meet a debit payment:

- a. you may be charged a fee and/or interest by the financial institution which holds the Fee Account or Settlement Account; and
- b. you must arrange for the debit payment to be made by another method or arrange for sufficient clear funds to be in the Fee Account or Settlement Account by an agreed time so that we can process the debit payment.

We will not disclose any details of your Direct Debit Request unless:

- a. the disclosure is to a financial institution and is necessary to enable us to act in accordance with this Agreement; or
- b. we are required or permitted by law to make such disclosure.

You should check your account statement for the Fee Account and Settlement Account to verify that the amounts debited from the Fee Account or Settlement Account is correct.

If you believe that there has been an error in debiting the Fee Account or Settlement Account, you should contact us as soon as possible so we can resolve your query. Alternatively, you can contact the financial institution with whom the Fee Account or Settlement Account is held.

If we conclude that your Fee Account or Settlement Account has been:

- a. incorrectly debited, we will arrange for the financial institution with whom the Fee Account or Settlement Account is held to adjust the Fee Account or Settlement Account as required. We will notify you of

the amount by which the Fee Account has been adjusted; or

- b. has not been incorrectly debited, we will promptly respond to you by providing you with reasons and any evidence for this finding.

You must ensure that at all times we have a valid Direct Debit Request from you under which we may debit amounts from the Fee Account or Settlement Account that we are entitled to receive under this Agreement (**direct debit authority**). You may request us to cancel or suspend a direct debit authority. Alternatively, you can contact the financial institution with whom the Fee Account or Settlement Account is held. If you cancel or suspend our direct debit authority you must at the same time elect a new Fee Account or Settlement Account and execute a Direct Debit Request with respect to the new Fee Account or Settlement Account, which will be on the same terms as this clause 22.0 and clause 8.0.

You may change the Fee Account or Settlement Account to which your Direct Debit Request relates by giving us 5 Business Days' written notice. In this case, you will be deemed to have cancelled the relevant Direct Debit Request with respect to this account.

We can change the terms of this clause 22.0 in accordance with clause 23.0.

23.0 Changes to Agreement

We may make changes to the amount, frequency, time for payment of any fee or charge or repayment, or we may introduce any new, fee or charge.

We may make other changes to any of the terms of this Agreement without your consent in the following circumstances:

- a. to comply with or reflect any change (including a change in the interpretation of) or anticipated change in any relevant law, code of practice, guidance, rules of a Scheme or any general industry practice or any applicable prudential standards or liquidity requirements;
- b. to reflect any decision of a court or tribunal or decision or guidance of an external dispute resolution scheme or regulator or Scheme administrator;
- c. to reflect a change in our systems or procedures or to reflect industry or market conditions;
- d. for security reasons;
- e. as a result of changed circumstances (including by adding benefits or new or changed features or products);
- f. to respond proportionately to changes in the cost of funds; or
- g. to make these terms clearer.

If the change is unfavourable to you, we will give you at least 30 days prior notice of the change. Otherwise we will notify you no later than the date on which the change occurs.

However, we may give you a less than 30 days notice or, no notice or no prior notice if:

- a. it is a change that is required to immediately restore or maintain the security of a system or an individual facility, including the prevention of systemic or individual criminal activity, including fraud;

- b. we reasonably believe doing so is necessary for us to avoid, or to reduce, a material increase in our credit risk or our loss;
- c. it is a change as a result of the introduction of a government charge, duty, levy or tax. We may not be able to give you prior notice of these changes as they are externally controlled and determined; or
- d. the law otherwise requires it.

If after we change any of the terms and conditions, you are dissatisfied, you may terminate this agreement on 30 days notice in accordance with clause 32.0.

24.0 Change of details

You must immediately notify us if there is a change to:

- a. your email address;
- b. your name (including any business or trading name you use)
- c. your mobile phone number;
- d. the details contained in your Application Form (including any directors)
- e. your Settlement Account or Fee Account;
- f. the ownership or control of your business including any delegation by way of power of attorney (and where you are a publicly listed company, you are only required to notify us if there is a change to more than 50% of the ownership or control of your business);
- g. the nature of your business;
- h. your business/trading name, address or telephone number; or
- i. your ability to meet your liabilities as and when they fall due.

You are only authorised to process Transactions in furtherance of the business activities specified in your Application Form which must be performed from a location in Australia. You must obtain our prior consent before processing Transactions for any other business activities.

Other than for a change to your mobile phone number, we will notify you of any changes by SMS text notification to your nominated mobile phone number. We will notify you by SMS to your new and old mobile phone number if you change your mobile phone number. We reserve the right to suspend or discontinue providing you with such notifications at any time at our discretion and without providing you with notice.

A change to your email address or your mobile number will become effective one Business Day after we update your details in our systems.

The change to any of your other details will become effective within 72 hours after we update our systems except where the change relates to your Fee Account or Settlement Account, the change will become effective on the latter of 72 hours and the date on which you execute a new Direct Debit Request. You must immediately notify us if you have not authorised a change.

Unless otherwise notified in accordance with this clause, we will be entitled to assume that all of the details you have provided us with are current and correct. We will not be liable for any loss, damages, compensation or liabilities you incur as a result of failing to immediately notify us of any of the changes set out in this clause.

You must provide us with evidence which we request to support any change you request.

25.0 Notices

You agree that we can provide you with notice, statements and any other material that we may give you under this Agreement:

- a. via the Tyro Portal;
- b. via text message to the mobile phone number nominated in your Application Form;
- c. via our website (tyro.com);
- d. at the registered address or trading address specified in your Application Form or any other postal address you have provided us; or
- e. by email at the email address specified in your Application Form or any other email address you have provided us. It is your obligation to keep your operating systems and software subscriptions up to date so that you can receive emails from us.

Whenever this Agreement requires you to give us notice, you must give us that notice by contacting us following the contact details on our website.

26.0 Errors and complaints

We have internal processes in place to deal with any complaints that you may have in relation to the Tyro EFTPOS Facility or this Agreement. In relation to errors, queries or complaints regarding Transactions, in some cases our ability to fully respond to you and resolve the error, query or complaint will be dependent on us receiving information from the relevant Scheme involved in the Transaction.

Step 1

- a. Please contact us if you have any complaints with respect to the Tyro EFTPOS Facility or this Agreement and we will seek to resolve your concerns as soon as possible. You can contact us by using the details on our website.
- b. Please note that you should not use this procedure to report any unauthorised transactions, which you must immediately report to us.

Step 2

- a. If you are not happy with the outcome, you may request an independent review by writing a letter or email to us. The independent review will be conducted by our Complaints Officer. Please include all facts and details that are relevant to your complaint and your contact details so our Complaints Officer can contact you.

Step 3

- a. If you are still not satisfied with the steps taken by us to resolve your complaint, or if we do not respond to you in a timely manner, you can contact our external dispute resolution service provider, the Australian Financial Complaints Authority ("AFCA"). The details of AFCA are:

Telephone: 1800 931 678
 Website: www.afca.org.au
 Fax: 03 9613 6399
 Email: info@afca.org.au
 Write to: Australian Financial Complaints Authority
 GPO Box 3, Melbourne VIC 3001

Please note that before AFCA can investigate your complaint, they will generally require you to have first

provided us with an opportunity to address your concerns.

27.0 Integrated software

This clause applies where you use Integrated Software.

Where you use Integrated Software in conjunction with the Tyro EFTPOS Facility, you authorise us to accept from the Software Provider and provide to the Software Provider information about your Integrated Software, your operating system, Transaction instructions and related information.

You understand that the Software Provider's access to and use of data provided by us to the Software Provider will not be subject to our terms, but rather will be treated in accordance with the Software Provider's terms of use.

You acknowledge and agree that we are not liable for any Loss that you incur as a result of or in connection with:

- a. us collecting information from or disclosing it to, a Software Provider or other person in accordance with this clause 27.0;
- b. your use of the Integrated Software, including Loss to the extent that it is caused by:
 - i. any delay, non-performance, failure to perform or processing errors arising from the transmission of data or instructions using the Integrated Software;
 - ii. any interruption or breakdown of electronic services;
 - iii. any transaction conducted in reliance on the accuracy of information provided by someone other than us which is or turns out to be false, inaccurate or misleading; or
 - iv. any act or omission by your provider of Integrated Software or the operation of the Integrated Software.

except for a Loss due to our fraud, negligence or wilful misconduct.

You agree to indemnify and hold us harmless against any Loss (except for a Loss due to our or a Software Provider's fraud, negligence or wilful misconduct), which we or the Software Provider may suffer or incur to any person as a result of us or the Software Provider acting on the authority given by you to us in this clause.

28.0 Your warranties

You represent and warrant to us that:

- a. all information that you provide to us, including in your Application Form, is true and correct;
- b. you have power and authority to carry on your business as it is being conducted and have legal authority to use any name under which your business is being conducted as at the date of your Application Form and for the whole time you have a Tyro EFTPOS Facility;
- c. the name under which you have opened the Tyro EFTPOS Facility is the name under which you sell products and services;
- d. your obligations under this Agreement do not conflict with any of your constitutional documents or breach any other contractual obligations that you have;
- e. you are not part of any litigation, proceeding or investigation of any nature pending or, to your knowledge, threatened against or affecting you which

would reasonably be expected to have a material impact on your ability to perform your obligations under this Agreement;

- f. you warrant that the goods and services you sell or provide will comply with all applicable laws and will not infringe upon any third party's rights and interests, including, without limitation, intellectual property rights and proprietary rights;
- g. you are not engaged in, and will not engage in, any activity prohibited by clause 15.0;
- h. you will not engage in any activity designed to influence the mix of Transactions you submit for processing via the Tyro EFTPOS Facility to be comprised of 100% of one Scheme brand; and
- i. you are at least eighteen (18) years of age.

If you engage in transactions with customers who are individuals or small businesses with fewer than 20 employees, you specifically represent and warrant to us that you will provide all consumer disclosures required by applicable law, and will not engage in unfair or deceptive acts or practices, or any other conduct that could be considered to violate such applicable law.

29.0 Disclaimer of Warranties

To the fullest extent permitted by law, the Tyro EFTPOS Facility and all other Tyro Services are provided "as is," "as available", and with all faults. We disclaim all warranties, express and implied, including, but not limited to, any warranties of merchantability, quality of information, quiet enjoyment, non-infringement, title, and fitness for a particular purpose. We do not warrant that the Tyro EFTPOS Facility or any Third Party Sites will be error free, uninterrupted, free from spyware, malware, adware, viruses, worms, or other malicious code, or will function to meet your requirements.

We do not warrant that the Tyro EFTPOS Facility or any Third Party Sites will work on your hardware, with your operating systems, or with any other software installed on your computers. Information obtained by you from Tyro or its business partners, service providers or representatives will not create any warranties.

To the extent permitted by law, you assume all risks associated with your use of the Tyro EFTPOS Facility or any other Tyro Service. It is your sole responsibility to determine whether the Tyro EFTPOS Facility or any other Tyro Service or product is suitable and adequate for your needs.

You specifically acknowledge that we do not have any control over the products or services that are paid for through the Tyro EFTPOS Facility, and we cannot ensure that all Transactions will be completed or that we will authorise all Transactions that your customers initiate.

30.0 Liability and indemnity

To the maximum extent permitted by law or by any code which applies to this Agreement, you agree to indemnify us and keep us indemnified against, and must pay us on demand the amount of all losses, liabilities, costs (including legal costs and Scheme penalties) expenses and damages incurred or arising in connection with:

- a. your (or anyone using your accounts) breach of this Agreement or applicable law or any breach of your obligations by any of your officers, employees, advisers or contractors;
- b. the activities in connection with which you are using the Tyro EFTPOS Facility, where such use or activities are

conducted in a wrongful, illegal, fraudulent or abusive manner;

- c. your or any of your staff's or representatives' negligence, wilful misconduct or fraud, including without limitation, claims of intellectual property infringement, breach of privacy or violation of applicable law; or
- d. any dispute between you 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 our fraud, negligence, wilful misconduct or breach of this Agreement,

except for a Loss due to our fraud, negligence or wilful misconduct.

You may not enter into any stipulated judgment or settlement that purports to bind us without our prior express written authorisation, which will not be unreasonably withheld or delayed.

You authorise us to contact, liaise with and disclose your information to any financial institution holding your Settlement Account or Fee Account in order to recover amounts due to us (including any Chargeback) or as part of any investigation we are conducting. You authorise us to clawback funds (in an amount we reasonably determine) from your Settlement Account or Fee Account (or hold settlement monies in suspense before they are transferred to your Settlement Account) and hold such funds in suspense for the reasonable duration of any investigation by us into any potential Chargeback or fraudulent, unauthorised or illegal activity that we may reasonably suspect either involving you or your Tyro EFTPOS Facility. We may apply such funds in any manner we reasonably determine following the completion of any such investigation. You indemnify us for any Loss we suffer in relation to the application of those funds where we have applied them acting reasonably based on the information we have available to us.

The indemnities in this clause is a continuing obligation and continues after this Agreement ends. It is not necessary for us to incur expense or make payment before enforcing the indemnity.

Except in respect of fraud and fraudulent misrepresentation, and death or personal injury caused by our negligence, regardless of whether any remedy in this Agreement fails of its essential purpose or otherwise, we are not and will not be liable to you for any, indirect, special, punitive, exemplary, Consequential Damages, or any other damages whatsoever, without regard to the form of action (including, but not limited to, contract, negligence, or other tortious actions) arising out of or in connection with:

- a. this Agreement;
- b. the Tyro EFTPOS Facility including your use of the Tyro EFTPOS Facility or any interruption or delay of service relating to the Tyro EFTPOS Facility;
- c. any Third Party Site;
- d. the unauthorised access by any party to the Tyro Services and systems, including Personal Data,

even if we have been advised of the possibility of those damages.

31.0 Suspension

We may, acting reasonably, cancel or suspend your access to the Tyro Services or any component of them by providing you with 30 days' prior notice.

We may also cancel or suspend your access to the Tyro Services without prior notice if:

- a. we reasonably suspect or a law enforcement authority or a regulator tells us that you have been or may be involved in fraudulent or other unlawful activity;
- b. you are subject to an Insolvency Event or, where you are a company, we become aware that you are deregistered;
- c. for security reasons, where we reasonably suspect that if we do not do so, it may materially adversely affect you or us or cause you or us to suffer Loss; or
- d. we are required to do so as a result of being a member of, or being able to facilitate transactions in relation to, a Scheme.

32.0 Termination

We may immediately terminate this Agreement if:

- a. we reasonably suspect that you are committing fraud under the terms of this Agreement, or that you are using your Tyro Services in connection with illegal activity;
- b. you are in breach of a material provision of this Agreement, and if, in our reasonable opinion, the breach is capable of remedy, the breach is not remedied within 10 Business Days of us giving notice to remedy the breach;
- c. you are subject to an Insolvency Event or, where you are a company, we become aware that you are deregistered; or
- d. your continued use of the Tyro Services creates an unreasonable and material security, reputation or compliance risk to us.

We can immediately terminate the provision of the Tyro Services in respect of a particular Scheme if that Scheme declines access, suspends or terminates either our access to the Scheme or its services or directs us to suspend or cease providing the Tyro Services to you for any reason. Termination in respect of one Scheme will not affect the provision of Tyro Services in respect of other Schemes.

In all other instances, we may terminate this Agreement at any time without cause by giving 30 days' notice to you.

You may terminate this Agreement by giving 30 days' notice to us.

Termination of this Agreement does not affect any obligations incurred prior to termination. Clauses 6.0, 8.0, 14.0, 19.0, 20.0, 21.0, 22.0, 25.0, 27.0, 28.0, 29.0, 30.0, 33.0, 35.0, 36.0, 37.0, 38.0, and this clause 32.0 survive termination.

On termination of this Agreement, you must return to us all Equipment supplied to you by us including without limitation all guides, stationery and promotional materials supplied by us.

If you do not return the Equipment on termination of the Agreement, the Replacement Cost (or such lesser amount reasonably determined by us to be the reasonable value of the existing Equipment, which amount will be notified by us to you) will be a debt due by you to us. You authorise us to debit the Fee Account with the amount of the Replacement Cost (or lesser amount as provided above) of any Equipment that is not returned to us within 10 Business Days of termination of the Agreement. We will refund to you the Replacement Cost (or lesser amount as provided above) on receipt by us from you of the Equipment in good

order and condition if the Equipment is returned to us within 30 days of termination of the Agreement.

You agree to indemnify us and keep us indemnified against, and must pay to us on demand the amount of all Loss incurred or arising in connection with any misuse of Equipment that you were required to return to us but which you have not returned to us except for a Loss due to our fraud, negligence or wilful misconduct.

33.0 Remedies

You acknowledge and agree that your breach of this Agreement relating to the licences granted in this Agreement and your use of Tyro Confidential Information may result in irreparable harm and permanent injury to us for which monetary damages would be an inadequate remedy. Consequently, you acknowledge and agree that, in such circumstances, we will be entitled to seek and obtain, without the posting of a bond, in addition to all other remedies available to us, at law or in equity, immediate injunctive relief to prevent or stop any breach of those provisions.

34.0 Australian Use

You must not export the Tyro EFTPOS Facility.

35.0 Confidential Information

You will treat all of Tyro Confidential Information as strictly confidential and use the same degree of care to prevent disclosure of Tyro Confidential Information as you would use with respect to your own most confidential and proprietary information and, under no circumstances, less than the care that a reasonable person would take under the circumstances.

Except as expressly provided in this Agreement, you may not use or disclose any of Tyro Confidential Information without our prior written consent, except as required to your employees and agents on a need-to-know basis in order to fulfil your obligations under this Agreement; provided that those employees or agents have executed written agreements that are at least as protective of our rights to Tyro Confidential Information as those contained in this Agreement.

On termination of this Agreement or on our written request at any time, you will destroy or return to us all of Tyro Confidential Information in your custody or control.

This clause 35.0 will survive any termination of this Agreement for so long as you have in your possession any Tyro Confidential Information.

36.0 Ownership and Rights

You may provide feedback, suggestions comments, improvements, and ideas (collectively "**Feedback**") to us but you are not required to do so. You agree that we may use and exploit all Feedback for any purpose without obligation of any kind and without any obligation of confidentiality, attribution, accounting, compensation, or other duty to account to you.

We retain all right, title, and interest, including, without limitation, all intellectual property rights, in and to:

- a. the Tyro EFTPOS Facility;
- b. our systems and services;

- c. our Marks, including without limitation "Tyro EFTPOS Facility";
 - d. all Feedback; and
 - e. all Tyro Confidential Information,
- (collectively, "**Tyro Property**").

We reserve all rights in the Tyro Property not expressly granted to you in this Agreement. Without limitation of the foregoing, you have no right to use our Marks in any manner except as may be expressly permitted by us in advance in writing and in accordance with our then-current trademark use guidelines.

We will own all right, title and interest in all information we collect with respect to your use of your Tyro EFTPOS Facility, including without limitation, statistical information, and traffic analysis data ("**Usage Data**"). You agree that we may use and exploit all Usage Data for any purpose without any obligation to you; provided however, that we may only disclose Usage Data to third parties so long as the Usage Data is disclosed only in the aggregate and not in a manner that it is attributable to you or any individual.

During the term of this Agreement, you hereby grant us the right to list you as a Tyro EFTPOS Facility customer in any descriptions of Tyro EFTPOS Facility and related press releases, case studies, and other promotional and marketing materials; provided however, that we have no obligation to do so.

37.0 Personal Data and Data Security

In order to provide the Tyro EFTPOS Facility, we may be required to process Personal Data on your behalf. We shall only process such Personal Data in accordance with this Agreement, our Privacy Statement and Consent and our Privacy Policy, and otherwise in accordance with your written instructions. We shall ensure that appropriate security measures are taken against unauthorised access to, or unauthorised alteration, disclosure or destruction of, all Personal Data. However, you acknowledge that we are unable to ensure that unauthorised third parties shall not be able to circumvent our protections and gain access to that Personal Data.

You agree to comply with all applicable Privacy and Information Security Requirements.

You are solely responsible for notifying your customers that we are providing the Tyro EFTPOS Facility to you and that we are collecting Personal Data from your customers on your behalf in connection with such services. You represent and warrant to us that you will provide your customers with any and all notices, and will obtain from your customers all necessary rights and consents, under applicable law, the Privacy and Information Security Requirements and as required by us from time to time, to allow us to use and disclose all Personal Data collected, stored or processed by the Tyro EFTPOS Facility ("**Required Notices and Consents**"). The Required Notices and Consents include, but are not limited to, providing notice and procuring consent to the use of customer Personal Data for the following purposes:

- a. collecting, storing, and tokenising Card information;
- b. delivering Personal Data, including Card information, to us to facilitate the Tyro Services;
- c. assisting you and us in the provision of products or services that are requested by a customer;
- d. collecting and storing Personal Data for the purposes of sending direct marketing messages to customers;
- e. fraud detection and monitoring;

- f. for our internal business purposes;
- g. to enable us to comply with our legal, compliance, regulatory and audit requirements;
- h. transferring or disclosing Personal Data outside of Australia for the purposes of providing the Tyro EFTPOS Facility;
- i. allowing us to include the Personal Data in anonymised form in aggregated databases that can be used to generate reports, statistics or other analysis for use in improving the Tyro EFTPOS Facility services or promoting the Tyro EFTPOS Facility service to third parties; and
- j. for any additional use of Personal Data necessary to implement new features of Tyro EFTPOS Facility.

You represent and warrant that you will not use the Personal Data that is collected by us on your behalf or otherwise, other than in accordance with the Required Notices and Consents.

You may not retain, track, monitor, store, or otherwise use Personal Data regarding customers making payments or receiving invoices and/or receipts through the Tyro EFTPOS Facility for any purpose other than to process the Transaction, fulfil orders, send the invoice and/or receipt, and collect consents to future direct marketing by email, as the case may be. If you engage a developer and/or administrator to implement or manage your participation in the Tyro EFTPOS Facility, you represent and warrant that they will not access or use the Personal Data for any other purposes other than as contemplated in this Agreement.

We recognise the importance of respecting the privacy of those who visit our websites and use our products and services, including the Tyro EFTPOS Facility. Our Privacy Statement and Consent and Privacy Policy provide a description of how we collect, use, share, and protect personal information in connection with the Tyro EFTPOS Facility, as well as the choices and access rights you have in regards to such personal information.

38.0 Miscellaneous

We may from time to time set-off any amount due for payment by you to us against any amount due for payment by us to you.

Every provision of this Agreement will be deemed severable as far as possible from the other provisions. If any provision is found to be void, illegal or unenforceable for any reason, it will be deemed to be severed and omitted from this Agreement. This Agreement with the offending provision severed and omitted and with any consequential amendment if necessary will otherwise remain in full force.

This Agreement is to be construed according to the laws of New South Wales and the parties submit themselves to the non-exclusive jurisdiction of the Courts of New South Wales and any competent appellate courts.

This Agreement is binding on the parties, their executors, administrators, successors and assigns. You cannot assign this Agreement without our prior written consent. We may assign our rights or novate our rights and obligations under this Agreement at any time without your consent. However, in assigning our rights we will use reasonable endeavours to ensure that the assignee is able to fulfil our obligations under this Agreement.

Our failure or delay to exercise or enforce any right or provision of this Agreement or any rights under applicable law will not constitute a waiver of any of those provisions or rights.

We will not be liable for any delay or failure to perform any of our obligations under this Agreement resulting from any cause beyond our reasonable control, including without limitation, telecommunications, power, or utility failures.

39.0 Insolvency

If we receive notice that you are subject to an Insolvency Event, we will immediately suspend the Tyro Services provided to you without notice in accordance with clause 31.0. We will only remove a suspension on the Tyro Services provided to you with authorisation from or on behalf of the receiver, administrator, controller, liquidator or any other person that is appointed or otherwise lawfully controls you or your assets.

40.0 Australian business number

At all times you must maintain a valid and current Australian business number (ABN). If we receive notice or become aware that your ABN is no longer current or valid, we will immediately suspend the Tyro Services provided to you without notice in accordance with clause 31.0. We will only remove a suspension on the Tyro Services provided to you where we are provided with evidence that you have a valid and current ABN.