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Tyro Payments Limited ABN 49 103 575 042 AFSL 471951

# Tyro Terms and Conditions

## Part A – General

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Effective: 27 September 2021

### 1.0 Agreement

These terms along with any Application, the Privacy Statement and Consent and the terms applicable to the Tyro Services that we provide to you from time to time constitute your agreement with us (“**Agreement**”). By submitting an Application for Tyro Services (including electronically) and/or continuing to use the Tyro Services, you agree to be bound by this Agreement.

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 Definitions

In this Agreement:

“**Access Code**” means your four digit access code for the Tyro App.

“**Account User**” has the meaning given in clause 3.0 of Part C.

“**Administration Authority**” means the level of authority you select to control your Tyro Services.

“**AML/CTF Act**” means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

“**Apple**” means Apple Inc.

“**Application**” means an application lodged by you with us for Tyro Services.

“**Authorised Signatory**” means the person(s) who is authorised to control your Tyro Services on the terms set out in this Agreement.

“**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)**” has the meaning given to it in clause 2.0 of Part B.

“**Cardholder**” has the meaning given to it in clause 2.0 of Part B.

“**Chargeback**” has the meaning given to it in clause 2.0 of Part B.

“**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.

“**Device**” means any electronic devices from which the Tyro App can be accessed as notified by us.

“**Direct Debit Request**” means the direct debit request set out in any Application 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 8.0 of this Part A.

“**eCommerce Facility**” has the meaning given to it in clause 2.0 of Part B.

“**eftpos System**” has the meaning given in clause 2.0 of Part B.

“**Equipment**” has the meaning given in clause 2.0 of Part B.

“**Fee Account**” means the bank account(s) that will be debited for fees and other amounts payable by you in relation to Tyro Services as elected by you in an Application 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.

“**Invalid Transaction**” has the meaning given to it in clause 2.0 of Part B.

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

“**Linked Account**” has the meaning given to it in clause 3.0 of Part C.

“**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.

“**Maturity Date**” has the meaning given in clause 1 of Part E.

“**Personal Data**” means any information relating to an identified individual who makes a payment through your Tyro EFTPOS Facility or eCommerce Facility or whose details you otherwise cause to be stored in the systems used to deliver Tyro Services (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 our privacy statement and consent form.

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

“**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.

“**Settlement Account**” has the meaning given to it in clause 2.0 of Part B.

“**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 Services.

“**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.

“**Transaction**” has the meaning given to it in clause 2.0 of Part B.

“**Tyro App**” means a software application issued by us that can be accessed from a Device and used to access Tyro Services.

“**Tyro Bank Account**” means the basic deposit account issued by us (formerly referred to as the ‘Tyro Smart Account’).

“**Tyro Business Term Deposit**” means the term deposit issued 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:

- c. 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;
- d. information that is, or any time becomes, available to the public without any breach of obligation not to disclose it; or
- e. information that is developed independently by you without reliance on any of Tyro Confidential Information.

“**Tyro eCommerce**” has the meaning given to it in clause 2.0 of Part B.

“**Tyro eCommerce Portal**” has the meaning given to it clause 2.0 of Part B.

“**Tyro EFTPOS Facility**” has the meaning given to it in clause 2.0 of Part B.

“**Tyro Portal**” has the meaning given to it in clause 2.0 of Part B.

“**Tyro Services**” means the payments, banking, lending and other business services provided by Tyro from time to time and “**your Tyro Services**” means the Tyro Services provided by Tyro to you.

“**we**”, “**us**”, “**our**” and “**Tyro**” means Tyro Payments Limited ACN 103 575 042 AFSL 471951.

“**you**” and “**your**” means the person(s) who apply for, and are provided with, Tyro Services and includes their successors and assigns.

### 3.0 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 reasonable 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)”;
- 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;
- h. references to “your Tyro Bank Account” only apply to you if you have been issued a Tyro Bank Account; and
- i. a reference to:
  - i. the “Tyro EFTPOS Facility” includes products issued under the Bendigo Bank EFTPOS powered by Tyro brand; and
  - ii. “Tyro eCommerce” or “eCommerce Facility” includes products issued under the Bendigo Bank eCommerce powered by Tyro brand.

#### 4.0 Authorised Signatories

The Authorised Signatories are the people authorised to control your Tyro Services and are authorised to perform all functions on your Tyro Services. The initial Authorised Signatories are the people that sign your initial Application. You can add or remove an Authorised Signatory by completing documentation which we request.

You must ensure that all Authorised Signatories act in accordance with this Agreement. You are responsible for any breach of this Agreement by an Authorised Signatory.

We will cancel the authority of an Authorised Signatory if we receive notice that the Authorised Signatory is deceased or does not have the capacity to act as an Authorised Signatory.

You agree to us giving information about your Tyro Services to an Authorised Signatory.

#### 5.0 Administration Authority

Your Administration Authority is the level of authority required for:

- Authorised Signatories to authorise changes and generally control your Tyro Services;
- Authorised Signatories to apply for or accept Tyro Services; and
- Authorised Signatories and/or Account Users to initiate and approve payments using your Tyro Bank Account on the Tyro App.

Subject to the terms of this Agreement, if your Administration Authority is:

- “any to sign”:
  - any one Authorised Signatory can exercise your rights (apart from the specific functions referred to in the table below);
  - any one Authorised Signatory can apply for or accept new products or services offered by us. The terms and conditions of Tyro Services will be provided to the Authorised Signatory(ies) at the time of an offer. If an Authorised Signatory accepts any offer for Tyro Services you agree to be bound by the terms and conditions of the relevant Tyro Services;
  - any one Authorised Signatory or Account User can initiate and approve payments using your Tyro Bank Account on the Tyro App;

- any one Authorised Signatory can give us instructions in relation to a Tyro Business Term Deposit.
- “any two to sign”:
  - two Authorised Signatories must jointly exercise all of your rights (except as otherwise set out below).

However, even if your Administration Authority is “any two to sign”, any one Authorised Signatory may open and give us instructions in relation to a Tyro Bank Account or Tyro Business Term Deposit.

If you do not select an Administration Authority, the default Administration Authority is ‘any to sign’. Any one Authorised Signatory can change the Administration Authority to ‘two to sign’ at any time by contacting Customer Support.

Whether the Administration Authority is “any to sign” or “any two to sign”, where you have more than one Authorised Signatory, the following number of Authorised Signatories will be required to perform the functions listed below:

Level of authority required to perform certain functions		
Function	Authorised Signatory	Account User
Add or remove an Authorised Signatory	2	N/A
Add an Account User	2	N/A
Change an Account (Linked Account, Settlement Account or Fee Account)	2	N/A
Remove an account freeze that has been initiated by an Authorised Signatory	2	N/A
Change the Administration Authority to ‘any to sign’	2	N/A
Change the Administration Authority to ‘any two to sign’	1	N/A
Decrease a daily limit	1	N/A
Request your Tyro Bank Account be frozen	1	N/A
Give us instructions in relation to a Tyro Bank Account or Tyro Business Term Deposit	1	N/A
Authorise transfers to the Linked Account	1	1

#### 6.0 Fees and charges

##### General

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.

You authorise us to debit your Tyro Bank Account, Linked Account or Fee Account with any government charges, duties, levies or taxes that are imposed on or which are payable in relation to Tyro Services (including credits or debits to any of your accounts (including accounts with other financial institutions) or a Cardholder’s account). Where debited from your Tyro Bank Account, items will appear on your statement of account for the relevant period. We will

endeavour to provide you with prior notice of any government charges, duties, levies or taxes which are imposed on or which are payable in relation to Tyro Services. However, we may not always be able to give you prior notice of these changes as they are externally controlled and determined.

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

We can debit these amounts from your Tyro Bank Account, your Linked Account or any other account you have provided a direct debit authorisation for.

Would you like further information about fees and charges? You can obtain further information by contacting us.

We may introduce new fees and charges or change fees and charges - see clause 10.0 of this Part A. 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.

### **Tyro App**

We will not charge a fee to download or use the Tyro App. However you may incur charges from your mobile service provider for downloading and using the Tyro App. You will be solely responsible and liable to pay such charges. You should contact your mobile service provider if you have any questions regarding these charges.

### **7.0 Tyro App**

Not all electronic devices can install and use the Tyro App. Please view [www.tyro.com](http://www.tyro.com) to see the Devices that are currently approved by us. We may update the list of approved Devices from time to time in our discretion.

We do not guarantee that you will receive any notifications generated by the Tyro App as delivery relies on the services of a third party and is outside of our control.

It is your obligation to obtain, and maintain and upgrade as required any Device if you wish to have access to the Tyro App.

You can install and register the Tyro App on more than one Device using the same Access Code. If you are no longer in possession of one or more of your registered Devices, you must remove them from your devices list in the "Settings Menu" on the Tyro App or by contacting us.

Once you have registered for the Tyro App, we will send to you by email a username and temporary password for the Tyro App. Once you have logged in, you will be prompted to change your password and set your Access Code. You can change the password and Access Code at any time through the Tyro App.

You must only install approved applications on your Device and never override the software lockdown (i.e. jailbreak your Device).

You must not (and must ensure others do not):

- a. make or distribute copies of the Tyro App;

- b. act fraudulently or maliciously in relation to the Tyro App (including any software or code written or produced in connection with the Tyro App);
- c. copy, reproduce, alter, modify, reverse engineer, disassemble, decompile, transfer, exchange or translate the Tyro App (including any software or code written or produced in connection with the Tyro App);
- d. adversely affect, hack into or insert malicious code into the Tyro App (including any software or code written or produced in connection with the Tyro App);
- e. create derivative works of the Tyro App of any kind whatsoever.

If you grant the Tyro App permission to use your Device's location information, we will log this location information for security purposes.

You acknowledge that the Tyro App and this Agreement is between us and you, and not Apple or any other third party provider. Subject to the terms of this Agreement, we are responsible for the Tyro App, and Apple is not responsible for the Tyro App in any way to the extent permitted by law.

You acknowledge that you, the Account Users and Authorised Signatories are given a non-transferable licence to use the Tyro App on your Device in accordance with the terms of this Agreement and the Apple Usage Rules in the Apple Store Terms and Conditions. Any queries or complaints regarding the Tyro App (including but not limited to issues regarding intellectual property) should be directed to us.

To the maximum extent permitted by law we are not liable for any failure, delay or error of any Device or the unavailability of the Tyro App for any reason.

The availability of the Tyro App may be affected by factors outside our control. We will not be liable for any loss or damage which arises from the unavailability, difficulty, delay or inability to download or access content on the Tyro App or any communication system failure.

We may suspend or terminate your use of the Tyro App without notice at any time if we suspect that unauthorised transactions have occurred or that the Tyro App is being misused.

You acknowledge that the terms of agreement with your mobile service provider will continue to apply when using the Tyro App. To the extent that there is an inconsistency between those terms and the terms of this Agreement, you agree that the terms of this Agreement will prevail.

By downloading and installing the Tyro App, you agree to the terms of this Agreement.

### **8.0 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 8.0 and clauses 3.0, 12.0 and 15.0 of Part B;
- b. Settlement Account in any of the circumstances set out in the Direct Debit Request Service Agreement contained in this clause 8.0 and clauses 12.0 and 15.0 of Part B;
- c. Fee Account from time to time for any amounts payable or owing by you under this Agreement; and
- d. Linked Account with any amounts due to us which we cannot debit from the Fee Account for any reason.

If the due date for a debit to your Fee Account, Linked Account or Settlement Account falls on a day which is not a Business Day, we will debit your Fee Account, Linked Account or Settlement Account on the next Business Day unless your Fee Account and/or Settlement Account is a Tyro Bank Account, in which case we will debit your Tyro Bank Account on the due date (which may be any day). If you are uncertain as to when the debit to your Fee Account, Linked Account or Settlement Account will be processed, you should contact the financial institution with whom the Fee Account, Linked Account or Settlement Account (if this is not your Tyro Bank Account) is held.

It is your responsibility to ensure that:

- a. the account details of the Fee Account, Linked Account and Settlement Account are correct by checking them against a recent account statement issued by the financial institution with whom the Fee Account, Linked Account or Settlement Account (if this is not your Tyro Bank 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, Linked Account or Settlement Account (if this is not your Tyro Bank Account) is held;
- c. the Fee Account, Linked Account and Settlement Account (if this is not your Tyro Bank Account) can accept direct debits (as direct debiting may not be available on all accounts offered by financial institutions);
- d. the Fee Account, Linked Account and Settlement Account have 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, Linked Account and the Settlement Account is consistent with the account authority or signing instructions held by the financial institution in which the Fee Account, Linked Account and Settlement Account (if this is not your Tyro Bank Account) are held.

If there are insufficient cleared funds in the Fee Account, Linked 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, Linked Account or Settlement Account (if this is not your Tyro Bank 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, Linked 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, Linked Account and Settlement Account to verify that the amounts debited from the Fee Account, Linked Account or Settlement Account are correct.

If you believe that there has been an error in debiting the Fee Account, Linked 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, Linked Account or Settlement Account (if this is not your Tyro Bank Account) is held.

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

- a. incorrectly debited, we will arrange for the financial institution with whom the Fee Account or Linked Account is held to adjust the Fee Account, Linked Account or Settlement Account as required. We will notify you of the amount by which the Fee Account, Linked Account or Settlement 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 at all times that we have a valid Direct Debit Request from you under which we may debit amounts from the Fee Account, Linked 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, Linked Account or Settlement Account (if this is not your Tyro Bank Account) is held. If you cancel or suspend our direct debit authority you must at the same time elect a new Fee Account, Linked Account or Settlement Account and execute a Direct Debit Request with respect to the new Fee Account, Linked Account or Settlement Account which will be on the same terms as this clause 8.0 and clause 12.0 of Part B.

You may change the Fee Account, Linked 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 8.0 in accordance with clause 10.0 of this Part A.

## 9.0 Modifications to Tyro Services

We may discontinue, modify, or change any Tyro Service, at any time with three (3) months' notice in advance. Such changes may require you to update your online store at your own cost so that it remains compatible with, and interfaces accurately with, Tyro eCommerce. 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 a Tyro Service.

## 10.0 Changes to Agreement

We may make changes to any of the following:

- a. the interest rate or the interest rate tiers that apply to a Tyro Bank Account;
- b. the method of calculating or charging interest including the frequency with which interest is debited or credited;
- c. to introduce, remove or adjust any transaction limits that apply to the use of a Tyro Bank Account; or
- d. 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.

However, we cannot change the interest rate on a Tyro Business Term Deposit during its term.

If we change an interest rate applying to an account you hold with us, we will tell you no later than the date of the change unless we are unable to do so because the interest rate is determined by reference to an external reference rate or a money market rate or some other rate designated as a variable or floating rate. Other than changes to interest rates, 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 or a change to a government charge, duty, levy or tax - see clause 6.0 of this Part A; or
- d. the law otherwise requires it.

If, after we change any of the terms and conditions applicable to your Tyro Services, you are dissatisfied, you may terminate this Agreement to the extent that it relates to those Tyro Services on 30 days' notice in accordance with clause 20.0 of this Part A, although if you have a loan from us, you must first repay that loan in full.

### 11.0 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. any of your Authorised Signatories or Account Users;
- d. your Linked Account;

- e. your Settlement Account or Fee Account;
- f. your mobile phone number;
- g. the details contained in your initial Application (including any directors);
- h. 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);
- i. the nature of your business;
- j. your business/trading name, address or telephone number; or
- k. your ability to meet your liabilities as and when they fall due.

You must give us at least 5 Business Days' notice before any change of ownership is effective.

You must notify us of any change to the residency of the account holder or any controlling person (from that notified to Tyro at the time of completing your initial Application) within 30 days of the change occurring.

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 your details are updated in our systems.

A change to any of your other details will become effective within 72 hours after we update our systems except:

- for a change in ownership; or
- where the change relates to your Linked Account, 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.

### 12.0 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 or Tyro eCommerce Portal (as applicable);
- b. via the Tyro App;
- c. via text message to the mobile phone number nominated in your initial Application or any other mobile phone number you have provided us;
- d. via our website ([www.tyro.com](http://www.tyro.com));

- e. at the registered address or trading address specified in your initial Application or any other postal address you have provided us; or
- f. by email at the email address specified in your initial Application 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:

- a. via the Tyro App; or
- b. following the contact details on our website.

### 13.0 Customer Support

We will provide you with support via email or telephone to resolve any issues relating to your use of Tyro Services. 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 and/or eCommerce Facility.

### 14.0 Errors and complaints

We have internal processes in place to deal with any complaints that you may have in relation to the Tyro Services 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

Please contact us if you have any complaints with respect to the Tyro Services 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.

Please note that you should not use this procedure to report any unauthorised transactions, which you must immediately report to us.

#### Step 2

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

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](http://www.afca.org.au)  
 Fax: 03 9613 6399  
 Email: [info@afca.org.au](mailto: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.

### 15.0 Integrated software

This clause applies where you use Integrated Software.

Where your Tyro Bank Account is integrated with Integrated Software, you request and authorise us to disclose to the Software Provider and obtain from the Software Provider accounting, financial, account balance (as at the date and time we disclose it), transaction data (including current and historical data and reports) and payment instructions at intervals and using electronic file transfer or other methods we agree with the Software Provider. You accept and acknowledge that electronic services are subject to interruption or breakdown for a variety of reasons.

Where you use Integrated Software in conjunction with the Tyro EFTPOS Facility or Tyro eCommerce, 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 acknowledge that it is your obligation to ensure your credentials and information relating to your Tyro Services are kept secret and confidential.

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 15.0, except for a Loss due to our fraud, negligence or wilful misconduct;
- (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.

### 16.0 Your Warranties

You represent and warrant to us that:

- a. all information that you provide to us, including in any Application or Administration Authority, 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 initial Application and for the whole time you use Tyro Services;

- c. the name under which you have opened your Tyro Services 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 25.0 of this Part A; and
- h. 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.

#### **17.0 Warranties and Disclaimer of Warranties**

We warrant that:

- a. any Equipment rented or purchased 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.

Other than the warranties above, to the fullest extent permitted by law and without excluding or restricting any statutory implied warranties, all Tyro Services are provided "as is," "as available", and with all faults. We will use reasonable endeavours to address any faults in the Tyro Services as quickly as possible.

Other than in respect of any statutory warranties that cannot be excluded or restricted (including with respect to fitness for a particular purpose or quality of services) and the warranties above, we disclaim all warranties, express and implied in respect of Tyro Services.

We do not warrant that 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 Tyro Services 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 Tyro Services. It is your sole responsibility to determine whether the Tyro Services are suitable and adequate for your needs.

#### **18.0 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 Loss 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 Tyro Services, including your online store (if applicable), 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, willful 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, willful 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 an account to which you have transferred funds from your Tyro Bank Account, Tyro eCommerce, Tyro Business Term Deposit or Tyro EFTPOS Facility 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 any such 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 Services. 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 are continuing obligations and continue after this Agreement ends. It is not necessary for us to incur expense or make payment before enforcing the indemnities.

Except in respect of fraud, fraudulent misrepresentation, negligence, or wilful misconduct (in each case by us or our employees, agents or representatives), 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 Services including your use of Tyro Services or any interruption or delay of service relating to Tyro Services;



- 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.

Nothing in this clause is intended to exclude, restrict or modify any statutory implied warranties that cannot be excluded or restricted (including with respect to fitness for a particular purpose or the quality of a service).

### 19.0 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 (except the Tyro Business Term Deposit, unless it is required for system or other maintenance).

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.

Where possible, we will inform you as soon as practicable after suspension (except where the suspension is related to a current investigation or is required by law). Whilst in suspension, you must not submit Transactions for processing and we will not process any Transactions that you submit.

In addition to a general suspension of the Tyro Services, we may suspend the Tyro Services in respect of a particular Card or Transaction type due to delay, downtime or suspension by the relevant Scheme.

### 20.0 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 which, in our reasonable opinion presents a material risk to your ability to continue to process Transactions in accordance with this Agreement or your ability to pay or repay an amount owing to us under 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.

This termination right does not apply in respect of loans provided by us to you, which are governed by Part D of these terms (including with respect to default and repayment obligations).

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 all or any part of this Agreement at any time without cause by giving 30 days' notice to you (although we will not close a Tyro Business Term Deposit you have opened prior to the applicable Maturity Date).

If we terminate this Agreement and close a Tyro Business Term Deposit, we may in our absolute discretion reduce the interest payable to you on your term deposit funds in accordance with clause 11 of Part E.

Your Authorised Signatories may terminate this Agreement by giving 30 days' notice to us in accordance with the Administration Authority unless:

- a. you have a loan from us in which case the Agreement can only be terminated by you after your loan is repaid in full; or
- b. you have a Tyro Business Term Deposit and there are more than 30 days until the applicable Maturity Date, in which case you must give us at least 31 days' prior notice.

Termination of this Agreement does not affect any obligations incurred prior to termination. As applicable, clauses 2.0, 9.0, 12.0, and 18.0 of Part B, clauses 3.0, 18.0, 22.0 and 26.0 of Part C, clauses 2.0, 3.0, 6.0, 8.0, 12.0, 15.0, 16.0, 17.0, 18.0, 21.0, 26.0, 27.0, 28.0 and 29.0 of this Part A, and this clause 20.0 survive termination.

On termination of this Agreement for any reason, the rights and licenses granted to you will immediately terminate. Upon the termination of this Agreement, you must immediately cease all use of Tyro Services.

We will have no liability to you for any damages, loss of profits or other claims arising from the termination or suspension of your access to any Tyro Services.

If this Agreement terminates for any reason, you authorise us to disclose to any Scheme the fact that the Agreement terminated and the reasons for termination. You acknowledge that the information concerning termination of this Agreement will be available to any member of the Scheme(s) and may be used to assess subsequent applications for merchant facilities.

### 21.0 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.

## 22.0 Staff remuneration for providing financial services

Tyro staff are paid a salary. Subject to meeting minimum compliance and quality standards, Tyro sales staff may also be eligible to receive additional benefits based on achieving sales targets. The amount of additional benefits paid vary but are usually a smaller proportion of overall staff remuneration.

## 23.0 Referral arrangements

Tyro may enter into arrangements with third parties to pay fees for referring customers to us. These payments are not an additional cost to you but are paid by Tyro.

## 24.0 Australian Use

You must not export Tyro Services.

## 25.0 Prohibited Businesses and Activities

You must not:

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

## 26.0 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 fulfill 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 26.0 will survive any termination of this Agreement for so long as you have in your possession any Tyro Confidential Information.

## 27.0 Ownership and Rights

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.

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. Tyro Services;
- b. our systems and services;
- c. our Marks;
- 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 Tyro Services, 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 customer in any descriptions of Tyro Services and related press releases, case studies, and other promotional and marketing materials, provided however, that we have no obligation to do so.

## 28.0 Personal Data and Data Security

In order to provide the Tyro Services, 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.

In respect of Tyro eCommerce, you will be solely responsible for the security of your online store (where applicable), including all content contained in your online store and all Personal Data you collect from your customers.

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

You are solely responsible for notifying your customers that we are providing Tyro Services 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 Tyro Services (“**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. collecting and storing Personal Data to create customer accounts in the Tyro eCommerce Portal to facilitate the following services:
  - storing of customer details, including Card details, in order to provide card-on-file functionality;
  - the processing of payments from customers by us on a recurring basis;
  - the generation and delivery of invoices and receipts to customers via email;
  - providing coupons to customers that allow them to avail of discounts;
  - the analysis of data in relation to customer shopping habits in your online store;
- d. assisting you and us in the provision of products or services that are requested by a customer;
- e. collecting and storing Personal Data for the purposes of sending direct marketing messages to customers;
- f. fraud detection and monitoring;
- g. for our internal business purposes;
- h. to enable us to comply with our legal, compliance, regulatory and audit requirements;
- i. transferring or disclosing Personal Data outside of Australia for the purposes of providing the Tyro Services;
- j. 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 Services or promoting the Tyro Services to third parties; and
- k. for any additional use of Personal Data necessary to implement new features of Tyro Services.

You represent and warrant that you will not use the Personal Data that is collected by us on your behalf, or which is made available to you via the Tyro eCommerce Portal 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 Services for any purpose other than to process the Transaction, fulfill 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 Tyro Services, 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 Tyro Services. Our Privacy Statement and Consent and Privacy Policy provide a description of how we collect, use, share, and protect personal information in connection with Tyro Services, as

well as the choices and access rights you have in regards to such personal information.

## **29.0 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.