

Tyro Connect – Software Partner Terms

Date: 18 November 2020

This Agreement along with any separate Commercial Schedule we agree with you constitute the Agreement between Tyro Payments Limited ABN 49 103 575 042 (**we, us**) and any Solution (which includes its End Users) that uses or integrates with Tyro Connect (**you**), unless otherwise agreed in writing between you and us.

1. Agreement

By accepting this Agreement, agreeing to a Commercial Schedule, or by accessing, using or continuing to use Tyro Connect, or authorising or permitting any End User to access or use Tyro Connect, you agree to be bound by this Agreement.

If you have agreed to this Agreement on behalf of another entity or person, you warrant that you have the authority to bind that entity or person to this Agreement. This Agreement binds you and your Representatives and you are responsible for compliance with this Agreement by your Representatives and your End Users.

2. Interpretation and definitions

In this Agreement unless the contrary intention appears:

- a) **Agreement** means these terms and the Commercial Schedule (if any) which we agree with you.
- b) **App Solution** means a digital application or service which integrates with Tyro Connect.
- c) **Application Programming Interfaces** or **APIs** means the application programming interfaces developed by us and relating to various use cases in connection with Tyro Connect, which enables you to integrate your Solution to Tyro Connect and submit data, text, messages and other information to Tyro Connect (either directly or on your behalf).
- d) **Background IP** means our or your Intellectual Property which existed prior to the date we entered into this Agreement with you, or which can be demonstrated to have been developed separately from and unrelated to this Agreement, which we have provided to each other or otherwise made available to each other in connection with this Agreement, but excludes Tyro Connect Data and Personal Information.
- e) **Business Day** means any day other than Saturday, Sunday or a public holiday in the State of New South Wales.
- f) **Commercial Schedule** means a separate agreement (if any) that we enter into with you which sets out any additional terms that apply to your use of Tyro Connect.
- g) **Confidential Information** means any information disclosed between you and us which is in fact or which a reasonable person would consider as confidential, but excludes Tyro Connect Data and Personal Information.
- h) **Consequential Loss** means any indirect, special, consequential, punitive or exemplary damages, expenses, losses or costs, loss of anticipated or actual revenue or profits, loss of or inability to use equipment, a failure to realise anticipated savings, lost data, down time costs or loss of goodwill.
- i) **Data Breach** means an event where Personal Information is lost or subjected to unauthorised access, modification, use or disclosure or other misuse.
- j) **End User** means any person who has subscribed to or uses a Solution and whose data or information is submitted to Tyro Connect by you or who receives Tyro Connect Data or other information from you via Tyro Connect.
- k) **Fee** means the fee payable by you to use Tyro Connect as set out in your Commercial Schedule (if any) as notified to you or otherwise agreed with you and amended from time to time.
- l) **GST** means any tax imposed on the supply of goods or services which is imposed or assessed under GST Law.
- m) **GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- n) **Insolvent** means any of the following events, being bankrupt, in liquidation or provisional liquidation, under administration, having a controller (as defined in the *Corporations Act 2001* (Cth)) or analogous person appointed to any of your property, or being unable to pay your debts as and when they fall due or entering into a compromise or arrangement with your members or creditors or any other analogous event.
- o) **Intellectual Property** means patents, trade marks (whether registered or common law trade marks), designs, copyright, data sets, business and company names, domain names and all other rights or forms of protection having an equivalent or similar nature or effect whether within or outside Australia, whether registered or not, and including all rights of action, powers and benefits of the foregoing.
- p) **Loss** means any damage, loss, cost, charge, expense or liability however arising (including contractual, tortious, legal, equitable loss or loss pursuant to statute).
- q) **Personal Information** means personal information submitted to Tyro Connect by you or on your behalf (including by your Representatives and End Users) as that term is defined in the Privacy Laws.
- r) **POS Solution** means a point-of-sale software solution which integrates with Tyro Connect.
- s) **Privacy Laws** means the *Privacy Act 1988* (Cth) as amended from time to time, and which is taken to apply as if you were subject to those laws.
- t) **Privacy Policy** means our privacy policy which is available at www.tyro.com and which we may update from time to time.
- u) **Representative** of a party means that party's employees, officers, contractors and agents.
- v) **Solutions** means App Solutions and POS Solutions that are available on Tyro Connect.
- w) **Term** is as defined in clause 10(a).
- x) **Tyro Connect** means our proprietary technology, including the Application Programming Interfaces, which enables the integration of App Solutions and/or POS

Solutions to Tyro Connect, to facilitate the sharing of information within that environment.

- y) **Tyro Connect Data** means all data, text, messages and other information of any kind submitted to Tyro Connect by you or on your behalf, or by any other user, including any analysis, combination or manipulation of such by us, but excludes Personal Information.

3. Tyro Connect

- a) Tyro Connect makes available APIs to enable your Solution to integrate with Tyro Connect and, where applicable, connect to other Solutions offered by third parties that also integrate with Tyro Connect. This connectivity enables Tyro Connect Data and Personal Information to be shared between Tyro Connect and Solutions to facilitate transactions between Solutions and End Users within that environment.

- b) We may permit you to integrate your Solution to Tyro Connect and the APIs applicable to your Solution at our absolute discretion and only once we have undertaken compatibility, verification and feasibility assessments of your Solution to assess whether the Solution meets our required guidelines, specifications and policies which we may issue and update from time to time (**Certification**).

- c) In order to conduct the Certification, you will provide us with:

- i. a test account and any related support; and
- ii. access to your Solution as reasonably required in accordance with our required guidelines, specifications and policies,

with each respective party to bear their own costs in achieving Certification.

- d) We retain the right to periodically test the integration of the Solution with Tyro Connect and the APIs applicable to your Solution and undertake Certification subsequent to modifications, changes or major releases to Tyro Connect.

- e) We may modify or update software or other infrastructure supporting Tyro Connect (including varying existing APIs or introducing new APIs). In the event this could negatively impact interactions between Tyro Connect and your Solution, we will use commercially reasonable efforts to give you 30 days' prior written notice of any such change, unless such change is required for legal, regulatory, compliance or security reasons in which case it will be effective immediately.

- f) You must, in respect of your Solution:

- i. build to and maintain connectivity with Tyro Connect and the APIs applicable to your Solution within 3 months of the later of signing this Agreement and our release of an API applicable to your Solution;
- ii. ensure that your Solution maintains connectivity with and integration to Tyro Connect and the APIs applicable to your Solution;
- iii. where we make a modification or variation pursuant to clause 3(e), you must complete any required development work for your Solution to maintain integration and connectivity with Tyro Connect, within 3 months of the change occurring;
- iv. where we introduce a new API applicable to your Solution, you must build to and maintain connectivity with that API within 3 months of our release of the new API.

- g) You warrant that you own all right, title and interest in your Solution (including any Intellectual Property in your Solution) and that any work you undertake to integrate your Solution to Tyro Connect will not infringe any third party's Intellectual Property rights.

- h) We will use reasonable endeavours to minimise any interruptions, harm and damage to your Solution when it is integrated with Tyro Connect. However we cannot guarantee, and will not be liable for, any interruptions or Loss you incur as a result of the integration of your Solution to Tyro Connect unless such Loss is caused by our gross negligence, fraud or wilful misconduct.

4. General conditions

- a) Subject to complying with this Agreement, we grant you a revocable, non-exclusive, non-sublicensable and non-transferable licence during the Term to use Tyro Connect.

- b) You acknowledge and agree that:

- i. the role of Tyro Connect is to make available APIs to enable your Solution to integrate with Tyro Connect and, where applicable, connect to other Solutions offered by third parties that also integrate with Tyro Connect;
- ii. we are not responsible for, and do not warrant, the performance, accuracy, reliability, uptime or availability of Solutions, which are not controlled by us;
- iii. you may receive information through Tyro Connect which is provided to us by providers of other Solutions or their End Users. We do not warrant the accuracy or reliability of this information and it is your responsibility to assess whether the information is accurate, reliable or sufficient for your purposes;
- iv. Tyro Connect Data submitted to Tyro Connect by other Solutions may not be supported by your Solution and, as a result, may not be presented to your End Users. It is your responsibility to determine the compatibility of Tyro Connect Data with your Solution;
- v. it is your responsibility to ensure Tyro Connect is suitable and fit for your purposes;
- vi. this Agreement does not regulate any banking, payment or other merchant services we provide. These services will continue to be governed by our existing Tyro EFTPOS Banking Terms and Conditions which are available at www.tyro.com;
- vii. you must use Tyro Connect in accordance with this Agreement and any written guidelines, specifications or policies which we may publish and update from time to time;
- viii. we can add new or modified features or change Tyro Connect at any time;
- ix. you must not alter, reproduce, adapt, distribute, display, publish, reverse engineer, decompile, disassemble or otherwise attempt to copy or reproduce Tyro Connect;
- x. you must not harmfully use, cause or permit harmful use of Tyro Connect in a way that creates unreasonable or unwarranted interference with Tyro Connect;
- xi. you must not transmit or upload any data, text, messages and other materials on Tyro Connect that:

- are unlawful, threatening, abusive, libellous or which breach our or any third-party's Intellectual Property rights; or
- contain software viruses or any computer codes, files or programs that are designed to disrupt, damage, limit or interfere with the proper function and operation of Tyro Connect;

xii. we may use your name and logo in promotional materials we create or cause to be created in connection with Tyro Connect. You cannot use our name or logo unless you obtain our prior written consent; and

xiii. to the extent applicable, you must ensure that your End Users comply with this Agreement.

5. Fee

- a) You must pay us the Fee in accordance with your Commercial Schedule (if any) or as otherwise agreed with you from time to time.
- b) We may introduce or change the Fee at any time upon 30 days' notice (**Fee Change Notice Period**).
- c) If you do not agree to the new or changed Fee, you may during the Fee Change Notice Period, terminate this Agreement on 30 days' notice, after which your right to terminate will be governed solely by clauses 10(b), 10(c), 10(d) and 14(h).

6. Privacy and Tyro Connect Data

- a) You must comply with the requirements of the Privacy Laws in relation to Personal Information you have collected, stored or disclosed to Tyro Connect, including obtaining all consents, authorities and other acceptances and making all notifications required under Privacy Laws to enable us to use the Personal Information in the manner contemplated by this Agreement and our Privacy Policy.
- b) You must notify your End Users (in a form we may reasonably require) that we may collect and use their Personal Information (to the extent submitted to Tyro Connect) for the purposes set out in our Privacy Policy.
- c) Where Personal Information is accessed, collected, used, stored or disclosed through Tyro Connect, you acknowledge that we may access, collect, use, disclose and store such Personal Information in accordance with our Privacy Policy.
- d) Where we hold Personal Information on your End Users and the Personal Information is subject to an actual or suspected Data Breach, we will:
 - i. take reasonable steps to notify you in writing as soon as reasonably possible after becoming aware of the actual or attempted Data Breach;
 - ii. take reasonable steps to contain, investigate, mitigate the Data Breach; and
 - iii. co-operate in good faith and provide reasonable assistance to you to enable you to comply with your obligations under the Privacy Laws in relation to the Data Breach,

and you agree that:

- iv. you are responsible for notifying your End Users of such Data Breach; and

v. you must obtain our prior written approval on the particulars of the notification to your End Users, which we will not unreasonably withhold.

- e) You grant us with a perpetual, irrevocable, royalty free, worldwide, exclusive, assignable and sub-licensable licence to use, share, reproduce, analyse, and store Tyro Connect Data and Personal Information to perform our obligations under this Agreement and to otherwise commercialise Tyro Connect Data and Personal Information in any manner we consider appropriate. Any commercialisation of Personal Information will only be on a de-identified basis.
- f) You warrant that you are legally entitled to provide us with the licence in clause 6(e)) and that such licence will not cause you or any other party to be in breach of any contractual or legal obligations and will not infringe any third party's Intellectual Property rights.
- g) Unless the Tyro Connect Data was submitted to Tyro Connect by you, or we have a written agreement with you otherwise authorising the access, use or disclosure of Tyro Connect Data, you agree and acknowledge that, as between you and us:
 - i. we own all Tyro Connect Data; and
 - ii. you shall not access, use or disclose any Tyro Connect Data.
- h) You must only use, collect, reproduce or disclose our Confidential Information to perform your obligations under this Agreement.
- i) You may disclose our Confidential Information:
 - i. to your Representatives on a need-to-know basis in order to fulfill your obligations under this Agreement, provided that those Representatives have executed written agreements that are at least as protective of our rights to Confidential Information as those contained in this Agreement;
 - ii. with our prior written consent; or
 - iii. if you are compelled to by law or the rules of any stock exchange, provided that you must as far as practical and to the extent permitted by law, consult with us beforehand as to the content and timing of disclosure.
- j) You acknowledge that:
 - i. you are responsible for any unauthorised access, use or disclosure of Confidential Information caused by you (including your Representatives); and
 - ii. in the event of such breach, we may seek and obtain specific performance or injunctive relief as a remedy.

7. Solutions

- a) Tyro Connect will facilitate the connectivity of various Solutions. We do not endorse and are not responsible for the Solutions (including in respect of their performance, accuracy, reliability, availability or uptime) and have no control over the Solutions.
- b) In relation to your Solution, you will provide us with reasonable assistance to create and implement support services for End Users, including assistance with preparing guides for End Users to connect the Solution with Tyro Connect and providing responses to End Users' enquiries.

c) You must not use your Solution in a manner that is inconsistent with this Agreement or which infringes our or any third party's Intellectual Property rights.

d) We may change, suspend, remove, disable or impose access restrictions or limits on any Solution at our absolute discretion.

8. Commercial Schedule

The Commercial Schedule may set out additional terms that apply to your use of Tyro Connect. The terms of the Commercial Schedule will be taken to be incorporated into and form part of the Agreement. To the extent there is any inconsistency between the Commercial Schedule and these Terms, the terms of the Commercial Schedule will prevail.

9. Suspension

a) We can suspend your access to Tyro Connect:

i. during upgrades and maintenance (scheduled and unscheduled). Where possible we will give you prior notice of scheduled outages;

ii. where Tyro Connect is unavailable due to any circumstance beyond our reasonable control, such as any delay, fault or interruption of any third-party service provider including telecommunications or internet connection services or another Solution;

iii. where we reasonably suspect that you have acted in an unlawful, fraudulent or improper manner in using Tyro Connect; or

iv. where we reasonably suspect that you have breached a term of this Agreement.

b) We will notify you if we suspend your access to Tyro Connect.

c) If you demonstrate that the matters giving rise to the suspension have been rectified, we may reactivate your access to Tyro Connect at our absolute discretion.

10. Termination

a) This Agreement will commence on the earlier of your first access to or use of Tyro Connect and the date on which you agree to this Agreement and will continue unless terminated in accordance with this Agreement (**Term**).

b) Either you or we can terminate this Agreement by giving 90 days' notice.

c) You may terminate this Agreement under and in accordance with clauses 5(c) and 14(h).

d) Either party may immediately terminate this Agreement if the other party has:

i. breached a material term of this Agreement that is capable of remedy and has failed to remedy the breach within 14 days after receiving a written notice specifying the breach and required remediation;

ii. breached a material term of this Agreement that is incapable of remedy;

iii. become Insolvent;

iv. committed fraud or done anything that materially damages the non-breaching party's reputation; or

v. ceased to operate its business

e) In addition, we may immediately terminate this Agreement if your access to Tyro Connect has been suspended for a continuous period of at least 20 Business Days.

f) If you terminate pursuant to clauses 5(c), 10(d) or 14(h), or we terminate pursuant to clause 10(b), we will provide you a pro-rata refund of Fees paid in advance in respect of any period after the end of the Term (if any). Otherwise, no refund will be provided.

g) Upon termination:

i. other than perpetual licences, the remaining licences granted to each party under this Agreement will immediately cease;

ii. you must promptly pay to us all outstanding Fees (if any);

iii. you must promptly return to us, or certify in writing that you have permanently destroyed, any of our Confidential Information that is in your possession or control.

h) Termination will not prejudice the rights or remedies accrued to the parties prior to termination.

i) Clauses 2, 6, 10(i), 11, 12, 14(a) and 14(l) survive termination of this Agreement.

11. Intellectual Property rights and no-warranty

a) All rights, title and Intellectual Property in Tyro Connect are owned by us.

b) Each party will own its own Background IP. To the extent necessary to provide Tyro Connect and perform their obligations under this Agreement, each party provides the other party with a revocable, non-exclusive, non-transferable and royalty free licence to use its Background IP during the Term.

c) Any Intellectual Property developed by us in improving, altering, enhancing or otherwise developing Tyro Connect (whether as a result of suggestions made by you or your Representatives, or arising from or in connection with Tyro Connect Data or Personal Information) will vest in us, and you will do all things reasonably required (including procuring for our benefit all necessary consents) to absolutely assign and transfer to us all rights, title and interests necessary to give effect to this clause.

d) Each party acknowledges that other than the licences expressly granted by this Agreement, the party will not have or acquire any right, title or interest in the Intellectual Property of the other party.

e) Each party represents and warrants to the other that it is entitled to grant the licences set out in this Agreement and that the other party's use of the Intellectual Property as licensed pursuant to this Agreement will not infringe the Intellectual Property rights of any other person.

f) Tyro Connect is provided on an "as is" and "as available" basis, without any warranties of any kind to the maximum extent permitted by law. We expressly disclaim any and all warranties, whether express or implied, other than those expressly stated in this Agreement to the maximum extent permitted by law. This clause cannot, and does not intend to, limit any warranties implied by statute.

12. Limitation of liability and indemnity

a) To the maximum extent permitted by law, 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:

- i. any of the warranties and representations made in clause 14(d) being untrue, incorrect or inaccurate;
 - ii. your breach of this Agreement or any breach of this Agreement by your Representatives or End Users; and
 - iii. your or your Representatives' negligence or fraud or any dispute between you, the Solutions or End Users except to the extent that the dispute has arisen due to our breach of this Agreement, or our fraud, wilful misconduct or gross negligence.
- b) You must indemnify us for Loss incurred by us arising out of, in connection with or in relation to any infringement of a third party's Intellectual Property rights if the alleged infringement arises out of or in connection with any activity permitted under a licence granted by you pursuant to this Agreement.
- c) Subject to clause 12(e), to the maximum extent permitted by law, our liability to you in respect of or in connection with our obligations under this Agreement will in no event exceed the Fees (if any) paid by you in the previous 12 months prior to the first event or occurrence giving rise to such liability.
- d) Subject to clause 12(e), to the maximum extent permitted by law, we will not be liable to you under any circumstance for Consequential Loss that you incur.
- e) Nothing in these Terms is intended to have the effect of contracting out of any applicable legislation, except to the extent permitted by such legislation.
- 13. Taxes**
- a) You agree to pay, or reimburse us if we pay on your behalf, any taxes, duties or other levies which are imposed on or otherwise payable in relation to the Fees.
- b) Unless otherwise specifically stated, sums payable or consideration provided under this Agreement will be expressed as being exclusive of any applicable amount of GST.
- c) Where a party (supplier) makes a taxable supply to a person (recipient) under on in connection with this Agreement and GST is imposed on that supply, the supplier will be entitled to:
- i. increase the consideration otherwise payable by the recipient for that supply under this Agreement by the amount of that GST; and
 - ii. otherwise recover from the recipient the amount of that GST.
- d) The supplier must issue a tax invoice to the recipient no later than 10 Business Days after payment to the supplier of the GST inclusive consideration for that supply.
- e) Words or expressions defined in the GST Law have the same meaning in this clause 13 unless otherwise defined in this Agreement.
- 14. Miscellaneous**
- a) This Agreement is governed by the laws in force in New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts in that jurisdiction.
- b) This Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.
- c) Unless otherwise agreed by the parties in writing, this Agreement constitutes the entire agreement between the parties about its subject matter and supersedes any previous understanding, agreement, representation or warranty relating to that subject matter.
- d) You represent and warrant that:
- i. you have full power and authority to enter into this Agreement and perform the obligations under it;
 - ii. if you are a company, you are properly registered and incorporated as a corporation which validly exists under the laws of its jurisdiction of incorporation;
 - iii. if you are a partnership, you have the authority under the constituent documents of the partnership to accept this Agreement and the partnership has not been terminated nor has any event occurred which could result in its termination; and
 - iv. if you are acting as trustee of a trust, you have the authority under the constituent documents of the trust to accept this Agreement on behalf of the trust.
- e) In the event of any inconsistency between this Agreement, any Commercial Schedule and another written agreement between us and you relating to Tyro Connect, the documents will take priority in the following order:
- i. a written agreement between us and you relating to Tyro Connect that is not this Agreement (highest priority);
 - ii. Commercial Schedule;
 - iii. this Agreement (lowest priority).
- f) We can make changes to the terms of this Agreement without your consent in the following circumstances:
- i. 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 or general industry practice, or applicable prudential standards;
 - ii. to reflect any decision of a court or tribunal or decision or guidance of an external dispute resolution scheme or regulator;
 - iii. to reflect a change in our systems or procedures or to reflect industry or market conditions;
 - iv. for security reasons;
 - v. as a result of changed circumstances (including by adding benefits or new or changed features or products); or
 - vi. to make this Agreement clearer.
- g) If the change is unfavourable to you, we will give you at least 30 days prior notice of a change to this Agreement under clause 14(f), otherwise we will notify you no later than the date on which the change occurs. However, we may give you less than 30 days' notice or, no notice or period of notice, if it is a change as a result of the introduction of or a change to a government charge, duty, levy or tax, the law otherwise requires it, or it is to enable us to comply with law.
- h) If after we change the terms of this Agreement under clause 14(f), you are dissatisfied, you may terminate this Agreement on 30 days' notice.

- i) No agency, partnership, joint venture or employment relationship is created between you and us as a result of entering into this Agreement.
- j) Failure or delay by us to enforce any term of this Agreement will not be deemed to be a waiver of future enforcement of that or any other provision. A waiver of any terms of this Agreement by a party must be in writing and executed by that party.
- k) You cannot assign your rights under this Agreement unless you obtain our prior written consent.
- l) Any provision of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void and unenforceable. The validity or enforceability of the remainder of this Agreement is not affected.
- m) Notices may be provided in writing by mail or electronic mail to the address provided for contacts at the time that you accept this Agreement, including addresses provided in any Commercial Schedule, or such other address that you subsequently advise to us by notice. In addition to this, we may provide you with notice in relation to this Agreement electronically by posting a communication on Tyro Connect or on our website.
- n) Notices to us must be provided to:
 - i. If by electronic mail: cosec@tyro.com
 - ii. If by mail or personal delivery:
Attention: Company Secretary
Tyro Payments Limited
Level 1, 155 Clarence Street
Sydney NSW 2000
- o) Each party will be deemed to have received the notice:
 - i. if by personal delivery, immediately upon delivery;
 - ii. if sent by electronic mail, immediately upon delivery;
 - iii. if sent by post, within 3 Business Days after the date of posting (if posted within Australia) and 10 Business Days after posting (if posted to an address outside of Australia); or
 - iv. at the time we post the communication on Tyro Connect or our website.