

Partner Agreement General Terms



This Agreement is entered into as of the date set out in the Agreement Details.

Between Till Payments Solutions Pty Ltd (ABN 64160 726 349) whose registered office is L7, 78 Waterloo Road, Macquarie Park, NSW 2113, (“Till Payments”);

And The company named in the Agreement Details (“Partner”).

2 Application

Recitals

- A Till Payments provides merchants with the Payment Services, including point of sale facilities and associated processing services & internet payment gateway services
- B The Partner has agreed to utilise Till Payments as its preferred service provider for payment services inclusive of point of sale facilities and associated processing services & internet payment gateway via Till Payments’ acquiring platform

Operative provisions

1 Interpretation

1.1 Definitions

In this Agreement the following definitions apply:

Agreement means this agreement including the Agreement Details, all schedules and annexures.

Agreement Details means the Application for Partner Agreement.

Card means a credit card, debit card, charge card or instrument (whether in the form of a card or otherwise), approved for use by Till Payments and its nominated Merchant acquiring platform, that provides for card accounts or records to be accessed, utilised or authorised either by the use of a card or by reference to a card number, or as the parties may otherwise agree in writing.

Change in Control means any of the following:

- a. a person (alone, through or together with their associates) acquires a relevant interest in 50% or more of the issued securities in the Partner;
- b. the Partner is or agrees to be controlled by a person

- who did not or was not entitled to control the Partner on the date of commencement of this Agreement; or
- c. a person who has not appointed or is not entitled to appoint a majority of directors to the board of directors of the Partner on the date of commencement of this Agreement does, or becomes entitled to, appoint a majority of directors to the board of directors of the Partner.

For the purposes of the above definition:

- i. “agrees” means an agreement which is written or oral, express or implied, conditional or unconditional and includes an obligation for a party to use its “best” or “reasonable” endeavours;
- ii. “acquire”, “relevant interest” and “voting shares” have the meaning given to them in Chapter 6 of the Corporations Act 2001;
- iii. “control” has the meaning given to it in section 50AA of the Corporations Act 2001, except that it must be read as if it applied to an individual as well as an entity; and
- iv. “associate” has the meaning given to it in the Corporations Act 2001.

Confidential Information means all information and materials (whether in writing or any other form) provided by Till Payments to the Partner and all information provided by the Partner to Till Payments or its Related Entities under this Agreement, including but not limited to

- a. merchant lists and merchant terms and conditions,
- b. marketing and promotional information,
- c. technical or other expertise, but does not include information that:
- d. either Till Payments or the Partner (as the case may be) rightfully possessed before it received the information from the other as evidenced by written documentation;
- e. is, at the time of disclosure, generally and publicly available through no fault of either Till Payments or the Partner (as the case may be); or
- f. is independently developed by either Till Payments or the Partner (as the case may be).

Costs means any and all costs and expenses incurred in connection with investigating, defending or asserting any claim, action, suit or proceeding incident to any matter indemnified against under the applicable agreement (including, without limitation, court filing fees, court fees, witness fees, and reasonable fees and expenses of legal

counsel, investigators, expert witnesses, consultants, accountants and other professionals).

GST Law has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Initial Term means is 36 months unless otherwise specified in the Agreement Details.

Insolvency Event or **Insolvency** occurs, with respect to any person, if:

- a. it is subject to any arrangement, assignment, moratorium or composition, resolution, or a court making an order, that that person be wound up (except for the purposes of a bona fide, solvent reconstruction or amalgamation);
- b. an order being made for the appointment of an administrator in relation to that person or a receiver, receiver or manager, liquidator or provisional liquidator is appointed over all or a substantial part of that person's assets or undertaking;
- c. it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act 2001 (Cth)) or is otherwise unable to pay its debts as they fall due;
- d. it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- e. it is subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this Agreement reasonably deduces it is so subject);
- f. an application is made to a court for an order described in paragraph (a) and paragraph (b);
- g. a resolution is passed to appoint an administrator in respect to a person;
- h. any secured creditor enforces its security;
- i. a person is trading whilst insolvent (as defined in the Corporations Act 2001); or

any circumstances occurring that are the equivalent of paragraphs (a) to (i) above under the law of the jurisdiction to which that person is subject (where paragraphs (a) to (i) above do not apply for any reason to that person).

Intellectual Property Rights means patents, trade marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, copyright (including rights in computer software) and moral rights, database rights, circuit layout rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world.

Law means any statute, ordinance, code or other law (including regulations under them) and any code of practice, practice notes, guidelines, rules, membership rules or standards issued by federal, state or local governmental or quasi-government authority or regulatory body or industry bodies, whether or not having the force of law.

Loss means any and all losses, Costs (including legal costs), expenses, obligations, liabilities, settlement payments, awards, judgments, fines, penalties, damages, deficiencies or other charges.

Merchant means any provider of goods and services that accepts Cards as a payment vehicle.

Merchant Contract means an agreement pursuant to which a Merchant is provided with Merchant Services.

Merchant Services means the provision of sales, service and support to Merchants in Australia as provided by Till Payments' merchant acquiring platform(s), including but not limited to the acquiring, switching and processing of Card based transactions and transactions using other payment instruments via electronic funds transfer at point of sale (EFTPOS), mail order/telephone order (MOTO), or through the internet.

Minimum Applications means the number of Applications identified in the Agreement Details.

Payment Services means any service related to the processing of a transaction derived from a card as outlined in these definitions

Personal Information has the meaning set out in the Privacy Act 1988 (Cth).

Personnel means any employee, agent, consultant, director, contractor, or advisor of the Partner.

Privacy Laws means the Privacy Act 1988 (Cth), any common law privacy obligations by which a party is bound and any industry code (whether voluntary or not) by which a party is bound.

Partner Account means the account identified in the Agreement Details.

Partner Trade Marks means the Partner's logos, insignia, get up and trade marks (whether registered or unregistered).

Related Entity has the meaning set out in section 9 of the Corporations Act 2001 (Cth).

1.2 Headings

Headings do not affect the interpretation of this Agreement.

2 Application

2.1 Application process

- a. The Partner will
 - i. actively promote the payment services to such of its customers and partners that currently use payment services or that may be interested in receiving payment services; and
 - ii. from time to time submit applications to Till Payments, in the form and manner advised by Till Payments, any Merchants or potential Merchants or such of its existing customers who may make enquires or carry on business in an industry that may be interested in entering into Payment Services arrangements.
- b. 'Active promotion' by the Partner includes the following activities:
 - i. using its own customer & partner lists to generate leads
 - ii. making inquiries about customer's existing merchant services or its need for new or additional services;

- iii. from time to time promote the Payment Services to its customers via its website and any other forms of market engagement utilised by the Partner
- c. The Partner must not, and must ensure that its Personnel do not, under any circumstances:
 - i. represent to any of its customers or merchants that Till Payments and its acquiring platforms will accept its application or that the Partner can influence Till Payments' decision to offer payment services
 - ii. make any misleading, deceptive or untrue statements to Merchants;
 - iii. act unconscionably or unfairly in dealings with Merchants; or
 - iv. use any marketing and promotional material in respect of the Payment Services that has not been prepared or approved by Till Payments, or other than in accordance with the directions of, and guidelines issued by, Till Payments.
- d. Till Payments:
 - i. may accept or reject an application for Payment Services by the Partner at its sole discretion and on its own terms;
 - ii. will prepare or aid in the preparation of all marketing and promotional material in respect of the Payment Services as requested by the Partner
 - iii. If Till Payments rejects an application for Payment Services, then the Partner may approach other suppliers of Payment Services to supply such services to that customer.

2.2 Minimum Applications

In each calendar year of the Initial Term and any Renewal Terms, the Partner must meet the Minimum Applications, if applicable.

2.3 Training

If required by Till Payments, the Partner must make its Partners and other relevant Personnel available for training by Till Payments in its procedures relevant to the Merchant & Processing Contracts. Till Payments will give reasonable notice of any training sessions.

2.4 Till Payments Marketing

Till Payments and its Related Entities may collect, store and use information obtained under this Agreement for the purpose of marketing any other products offered by Till Payments or its Related Entities.

3 Not used

4 Licence

For the Initial Term and any Renewal Terms, the Partner grants a non-exclusive, non-transferable, royalty-free licence to Till Payments and its Related Entities to use the Partner Trade Marks for the purposes of promoting the Merchant Services, including making public announcements regarding the Partner and use in any marketing and promotional material created by Till Payments to promote the Merchant Services.

5 Relationship of Parties

- 5.1 This Agreement is not intended to create a partnership, joint venture relationship between the parties.
- 5.2 The Partner must not hold itself out to be an agent of Till Payments' Acquiring platform, and is not authorised to bind those parties in any way under this Agreement. The Partner may represent itself as an agent of Till Payments.

6 Compliance with laws

The Partner must perform its obligations under this Agreement in compliance with all Laws and any codes of conduct applicable to its business.

7 Privacy

7.1 The Partner represents and warrants that:

- a. it will do all that is necessary in order to fully comply with all applicable Privacy Laws in relation to this Agreement;
- b. it will collaborate with Till Payments to obtain any necessary consents to use and disclose personal information under the Privacy Laws;
- c. any and all data communicated to Till Payments in relation to performance of this Agreement has been collected or obtained in full compliance with this Agreement and all applicable Laws in relation to the collection, storage and use of Personal Information.

- 7.2 The Partner must assist Till Payments as reasonably required to resolve any allegation or claim brought by any person referred to Till Payments by the Partner involving a breach of the Privacy Act 1988 (Cth) or an interference with the privacy of an individual.

8 Warranties

The Partner warrants and represents that:

- a. it validly exists under the laws of its place of incorporation and has power and authority to execute this Agreement and carry out its obligations under this Agreement;
- b. it is validly registered for GST purposes (and will remain so while this Agreement is in force);
- c. it has full capacity and all necessary licences, permits and consents to enter into and comply with its obligations under this Agreement; and
- d. It will not induce or attempt to persuade any merchant of Till Payments to contract with a competitor of Till Payments for Merchant Services.

9 Term

9.1 Initial Term

This Agreement is effective from the Agreement Date and will continue for the Initial Term.

9.2 Renewal Term

After the Initial Term, this Agreement will automatically be extended for a consecutive period of 36 months, unless otherwise specified in the Agreement Details on the same terms and conditions (each a "Renewal Term"), unless terminated in accordance with clause 10

10 Termination

- 10.1** Either party may terminate this Agreement by giving written notice to the other party at any time if the other party:
- breaches any term of this Agreement and does not rectify it within 14 days of being notified of the breach; or
 - is subject to an Insolvency Event.
 - where the terminating party is the Partner, Gives at least 180 days' notice of the termination, such period to commence on the date of the notice of termination.
 - where the terminating party is Till Payments, Gives at least 30 days' notice of the termination, such period to commence on the date of the notice of termination.
- 10.2** In addition, Till Payments and the Partner may terminate this Agreement immediately upon written notice to each other if either party is convicted of any offence that would materially affect the reputation, brand or image of either party as a result of being a party to this agreement.
- 10.3** In addition, Till Payments may terminate this Agreement immediately if the Partner purports to assign this Agreement or there is a Change in Control in the Partner or the Partner's corporate parent.

11 Consequences of Expiry or Termination

- 11.1** Termination of this Agreement for any reason does not affect the right of any party to seek damages for any breach of this Agreement, including damages arising from breach which gave rise to the termination.
- 11.2** Upon expiry or termination of this Agreement, the Partner must, at Till Payments' direction, return or destroy (and not retain any copies of) all documents or other materials containing or referring to the Confidential Information and other property of Till Payments (such as hard copy of promotional materials) in its possession or control, or in the possession, power or control of persons who have received Confidential Information from the Partner under clause 15.3(a) or (b).
- 11.3** Clauses 5, 6, 7, 8, 11, 12, 13, 14, 15, 17, 18 and 19 survive termination (for any reason) or expiry of this Agreement.

12 Indemnity

- 12.1** The Partner indemnifies, protects and holds harmless Till Payments and its Related Entities from and against any and all Losses (whether in contract, tort (including negligence) or under statute and whether or not litigation is commenced, imposed in any manner upon, incurred by or asserted against Till Payments or its Related Entities) in connection with or arising from:
- any negligence, fraud or misconduct by the Partner or its Personnel; or
 - a breach of any representation, warranty, covenant or obligation of the Partner contained in this Agreement.
- 12.2** Till Payments indemnifies, protects and holds harmless the Partner from and against any and all Losses (whether in contract, tort (including negligence) or under statute and whether or not litigation is commenced, imposed in any

manner upon, incurred by or asserted against the Partner or its Related Entities) in connection with or arising from:

- any negligence, fraud or misconduct by the Till Payments or its Related Entities; or
- a breach of any representation, warranty, covenant or obligation of Till Payments contained in this Agreement.

13 Liability

- 13.1** To the maximum extent permitted by Law, Till Payments excludes and disclaims all representations and warranties, express or implied, made to the Partner or any other person relating to this Agreement or its subject matter.
- 13.2** Till Payments' liability in respect of warranties and representations that cannot be excluded by Law (other than a condition or warranty implied by section 69 of the Trade Practices Act 1974 (Ch) or corresponding State legislation) is limited, as Till Payments may elect, to:
- in relation to goods, the replacement of the goods, supply of equivalent goods, repair or payment of the cost of repair; or
 - in relation to services, the supply of the services again or payment of the cost of having the services supplied again.
- 13.3** Till Payments excludes all liability for indirect, special, consequential or punitive loss or damage (including for loss of goodwill, loss of profit, loss of expected savings, opportunity costs, loss of business, damage to image and loss or corruption of data) in contract, tort (including negligence), under any statute or otherwise arising from or related in any way to this agreement or its subject matter.
- 13.4** To the extent not excluded by **clauses 13.1 to 13.3 inclusive**, Till Payments' total liability for loss or damage of any kind, however caused, in contract, tort (including negligence), under any statute or otherwise arising from or relating in any way to this Agreement or its subject matter is limited \$50,000.

14 Intellectual Property

Except as expressly set out in this Agreement, nothing in this Agreement transfers any interest or otherwise affects the ownership of any Intellectual Property Rights of either party in any material, data, work, item, process or thing.

15 Confidentiality

- 15.1** The parties acknowledge that the terms of this Agreement and all Merchant Contracts are part of the Confidential Information of Till Payments.
- 15.2** Both the Partner and Till Payments agree:
- to use the Confidential Information solely in the proper performance of its responsibilities and duties under this Agreement;
 - to keep the Confidential Information secret and to protect and preserve the confidential nature and secrecy of the Confidential Information; and
 - not to copy or remove any Confidential Information

without the other party's consent.

15.3 The Partner and Till Payments must not disclose Confidential Information to any person except:

- a. Personnel who require it for the purposes of this Agreement provided that those persons are informed of and undertake to and are compelled to keep such Confidential Information confidential;
- b. with the prior written consent of the other party;
- c. if required to do so by law or a stock exchange; or
- d. if required to do so in connection with legal proceedings relating to this Agreement.

15.4 Both the Partner and Till Payments must:

- a. ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in **clause 15.3**;
- b. establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access or use;
- c. keep the Confidential Information under their respective control;
- d. immediately take all steps to prevent or stop, and comply with any direction issued by either party from time to time regarding a suspected or actual breach; and
- e. immediately notify the other party of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information.

15.5 Both the Partner and Till Payments acknowledge that the Confidential Information is valuable, any breach of this **clause 15** may result in damage and are either party is entitled to enforce their rights by specific performance or injunction proceedings as monetary damages may not be sufficient relief.

15.6 Neither the Partner nor Till Payments may make any statement, press release or other announcement relating to this agreement without the other parties prior written consent.

16 GST

16.1 General

- a. In this **clause 16** words and expressions which are not defined in this contract but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- b. Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this contract are exclusive of GST.
- c. If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member, on any supply made under this Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply.
- d. The recipient will pay the amount referred to in **clause 16.1(c)** in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

16.2 Adjustment

If an adjustment event arises in respect of a taxable supply made by a supplier under this contract, the amount payable by the recipient under **clause 16.1(c)**

will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

16.3 Invoices

- a. The Partner will not issue any tax invoices in respect of the goods and services supplied by Till Payments and its preferred acquirers.
- b. As at the date specified in the Agreement Details each party is registered for GST purposes and will notify the other party if it ceases to be registered.

17 Dispute Resolution

17.1 Prior to referring a matter to external dispute resolution mechanisms, the parties will attempt to settle by direct negotiation any dispute in relation to this Agreement, including by referral to the respective chief executive officers of each party if the dispute cannot be resolved by the relevant contract representatives within 7 days.

17.2 If the respective chief executive officers are unable to resolve the dispute after 14 days (or such other period as is agreed between the parties) from the date of referral, the parties will refer the dispute to mediation administered by the Australian Commercial Disputes Centre before having recourse to arbitration or litigation. The mediation will be conducted in accordance with the then current mediation guidelines adopted by the Australian Commercial Disputes Centre.

17.3 Nothing in this **clause 17** will prevent a party from seeking urgent equitable relief before an appropriate court.

17.4 Notwithstanding the existence of a dispute, each party will continue to perform its obligations under this agreement.

18 Notices

18.1 A notice, demand, certification, process or other communication relating to this document must be in writing in English and may be given by an agent of the sender.

18.2 In addition to any other lawful means, a communication may be given by being:

- a. personally delivered;
- b. left at the party's current address for notices;
- c. sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- d. sent by fax to the party's current fax number for notices; or
- e. emailed to the email address last notified by the addressee.

18.3 If a communication is given by:

- a. post, it is taken as received if posted within Australia to an Australian address three Business Days (in place of receipt) after posting (or seven Business Days after posting if sent to or from a place outside Australia); or
- b. facsimile, when the sender's facsimile machine produces a report that the fax was sent in full to the addressee, the report will be prima facie evidence that the facsimile was received by the addressee in legible form at the time

indicated on that report.

- 18.4** If a communication is given:
- a. after 5.00 pm in the place of receipt; or
 - b. on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt, it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.
- 18.5** Each party may from time to time change its particulars for service by notice to each other party, however, the particulars for services initially are as set out in the Agreement Details.
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19 General

- 19.1** The Partner may not assign or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of Till Payments.
- 19.2** Till Payments may novate, or assign or otherwise deal with any of its rights or obligations under, this Agreement to any of its Related Entities without obtaining the Partner's prior written consent.
- 19.3** This Agreement contain the entire understanding between the parties as to the subject matter of this Agreement.
- 19.4** This Agreement may only be varied or replaced by a document executed by the parties.
- 19.5** No failure on the part of any party to exercise any right, power or remedy under this Agreement will operate as a waiver thereof, nor will a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or remedy.
- 19.6** If a provision of this Agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Agreement.
- 19.7** This Agreement is governed by and construed in accordance with the laws of New South Wales. The parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of New South Wales.
- 19.8** This Agreement may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.
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