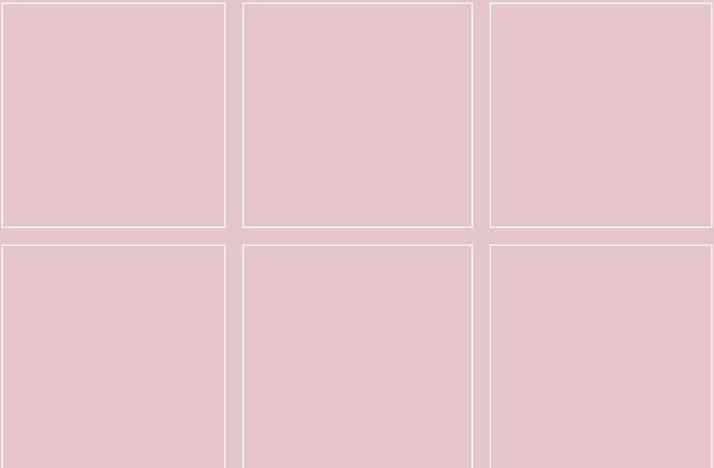




# Bendigo Merchant

Terms & Conditions

1 December 2011



Bendigo and Adelaide Bank Limited  
The Bendigo Centre  
Bendigo VIC 3550  
Telephone 03 5485 7911  
ABN 11 068 049 178.  
AFSL/Australian Credit Licence No 237879  
Bendigo Merchant Terms and Conditions

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## Terms & Conditions

### 1 About these conditions

These Conditions regulate your Merchant relationship with us, Bendigo Bank, and set out the Merchant Services which we provide to you.

### 2 What makes up this agreement

The Agreement between you and us in relation to the provision of Merchant Facilities is made up of the following:

- the Letter of Offer issued to you; and
- these Conditions, including the detailed statement headed “Schedule A Merchant Agreement”; and
- the application for Mail/Telephone if applicable; and
- any annexure to this Agreement applicable to a Transaction method you may use which is signed and dated by you and us for identification; and/or
- any agreements made regarding the use of any equipment or software; and/or
- the Merchant Operating Guide; or
- the User Guide.

### 3 Approved transaction methods

The Transaction methods which you may use at the date of this Agreement are described in the Schedule A Merchant Agreement and may be:

- a) Transactions processed via an Electronic Terminal, subject to clause 19; and/or
- b) Transactions processed via an Online Service, subject to clause 20, including the following:
  - Website Payment Gateway
  - Online MOTO

- Batch Processing

- PhonePOS

and/or;

- c) Manual Imprinter Transactions, subject to clause 21.

#### **4 Card acceptance**

You must:

- a) only accept those Cards detailed in Clause 6;
- b) stop accepting a Card immediately if:
  - we provide Notice for you to do so; or
  - the Agreement is terminated; and
- c) stop using or displaying relevant decals and advertising material if either of the above occur.

#### **5 Use of cards**

You may:

- a) accept a Card in a credit Transaction only for the supply of goods and services or the processing of a refund in respect of goods or services supplied by you; or
- b) accept a Card in a debit Transaction for the supply of goods or services and to allow a Cardholder to debit their cheque or savings account to obtain cash from you.

You cannot:

- c) supply cash where the Card is a Credit Card; or
- d) carry out refunds to your own Card; or
- e) use this facility as a means of funds transfer between your own accounts; or
- f) carry out a refund to any card to which an original purchase has not been processed via your facility. The refund cannot exceed the value of the original sales transaction.

#### **6 Cards accepted**

You can process Transactions using those Cards specified by us in writing at the commencement of your Agreement. These are the following Cards:

- a) all Cards displaying the Visa or MasterCard logo or the logo of their international affiliates; and
- b) all Cards issued by member financial institutions (Banks, Building Societies and Credit Unions) displaying the EFTPOS symbol (note: only Electronic Terminals used in a Card Present situation can accept these Cards); and
- c) all Charge Cards if we have programmed your facility under clause 7 to do so, by separate agreement with the issuer of those Charge Cards.

You must not:

- d) prefer one type of Card over another.

#### **7 Charge card**

We may program your terminal to accept Transactions involving a Charge Card issued under a Charge Card scheme provided you inform us in writing of your Merchant number for that Charge Card.

All we will do in relation to a Transaction involving a Charge Card is to transmit the particulars of the Transaction to the person conducting the scheme under which the Charge Card was issued. We do not make any representations and give no assurances for:

- a) the creditworthiness of any person presenting a Charge Card; or
- b) the performance of any agreement or arrangement between you and the Charge Card scheme.

We will not process refunds on manual vouchers pertaining to any Charge Card Transaction.

## **8 Supply of goods and services**

You undertake to:

- a) honour a Card provided by a Cardholder for the payment of goods and services to be supplied by you in accordance with this Agreement; and
- b) establish a fair policy for the exchange or return of merchandise and give credit to each such return not in cash but by issue of a credit Transaction; and
- c) establish a fair policy for the handling of orders processed in a Card Not Present situation, so as to minimise the possibility of Cardholder disputes and the unauthorised use of Cards; and
- d) discharge your obligations to Cardholders in relation to Transactions (for example, by delivering the relevant goods or rendering the relevant services).

## **9 Your consents**

You consent to:

- our processing all your Sales, Fallback and Credit Vouchers under this Agreement; and
- us debiting your Nominated Account for the amount of any refunds and any amounts you owe us under this Agreement; and
- us conducting a merchant check at any time during the Agreement.
- us or our authorised representative conducting a review of your systems, after a suspected or known Data Breach has occurred. This review may require physical site access and access to all storage and transmission systems.

## **10 Your obligations**

You agree to:

- a) provide us correct information relating to your facility; and

- b) ensure the validity of all Sales, Fallback and Credit Vouchers; and
- c) adhere to proper procedures in connection with a sale before processing a sales Transaction to us; and
- d) not make any representations regarding any goods or services which may bind us; and
- e) promote our facilities and processes so Cardholders can effect Transactions with you; and
- f) use your best endeavours to ensure that your staff are aware of, and comply with, the Agreement; and
- g) comply with the PCIDSS. We will tell you the level of security required based on the volume of Transactions you process.

## **11 Recovery of service fees and surcharges**

You are able to recover your Merchant Service fee or surcharges directly from those Customers who choose to pay for goods and services by initiating a Card Transaction.

If you decide to impose a surcharge for all purchases made through a Card on your Merchant Facility it is your duty to ensure that:

- a) your Customers are aware of the fee or surcharge that will apply to their Transaction; and
- b) your Customers are aware of the amount of the fee (such as a surcharge expressed in \$ or as a percentage), before they enter into the Transaction; and
- c) the amount of any such fee or surcharge charged to a Cardholder will be limited to the fees incurred by you in respect of your Card Transaction.

## 12 Our obligations

We agree to:

- a) accept all valid Sales, Fallback and Credit Vouchers you issue under this Agreement; and
- b) process any settlement of funds to your Nominated Account within 24 hours of you completing your settlement.

## 13 Transaction management

You must:

- a) use only Transaction Vouchers, Manual Imprinters, Electronic Terminals and other equipment or software authorised by us; and
- b) record each Transaction on a single Transaction Voucher and obtain authorisation for each Transaction Voucher; and
- c) establish a fair policy for dealing with:
  - refunds and disputes about Transactions;
  - problems with Card Not Present Transactions;
  - issuing and processing Credit Vouchers for the accepted return of goods or for orders accepted by you but not authorised by the Cardholder.
- d) provide customers with an easy means of informing you of changes to their card account details or their wish to cancel their payment arrangements if you process regular payments. You must action all customer requests within 5 business days of your receipt;
- e) obtain authorisation for all regular payment transactions;
- f) refund Transactions by means of credit and not cash; and

- g) if a Cardholder wishes to use their Card to pay for only part of the value of a Transaction, obtain the balance in cash at the time of the Transaction;
- h) use reasonable care in a Transaction to detect forged or unauthorised signatures or the unauthorised use or forgery of a Card and, in particular, you must:
  - compare the signature on the Card with the signature on the Transaction voucher; and
  - compare the Cardholder with any photograph on the Card; and
- i) obtain an authorisation for any Transaction if:
  - the embossed Card number is different from the Card number encoded or displayed on the Card;
  - the Manual Imprinter isn't working;
  - you think it possible that a signature is unauthorised or there is an unauthorised use or forgery of the Card; or
  - the Electronic Terminal is not working.
- j) always retain the Card until proper authorisation is obtained;
- k) except in the case of a Card Not Present Transaction give the Cardholder their copy of the Transaction Voucher immediately after completing the Transaction. The information on it should be identical with the information on any other copy. The Transaction voucher must have:
  - the Transaction amount; and
  - the date (and time if practical); and
  - a description of goods or services sold (manual vouchers only); and
  - details of any cash provided; and

- an indication of the account; and
- Card and Cardholder details; and
- Merchant name (which must be reasonably recognisable to the Cardholder).

#### **14 Card not present transactions**

For a Card Not Present Transaction you must give the Cardholder a Transaction voucher described in clause 13(k) above as soon as it is reasonably possible after one is requested by the Cardholder.

You must:

- a) obtain authorisation within the seven days prior to the despatch of goods to be shipped to your Customer. The purchase Transaction should be processed on the date of shipping; and
- b) contact the Customer to request permission to obtain a subsequent authorisation if more than seven days have elapsed between the date of the original authorisation and the goods being shipped;
- c) where the transaction is initiated by telephone, you must give the Cardholder the following information at the time of the transaction:
  - (i) a receipt number; and
  - (ii) the Transaction amount; and
  - (iii) the type of Transaction (eg purchase, refund, credit); and
  - (iv) the Card number; and
  - (v) Merchants trading name.

- d) provide the Bank with details of your practices to minimise fraud and chargebacks immediately on request, and comply with practices to minimise fraud and chargebacks which are acceptable to the Bank;
- e) agree that where the Bank or any of the approved Credit or Charge Card Schemes consider it appropriate to investigate fraud or chargebacks, the Bank may defer crediting your Nominated Account with the amount of sales in accordance with Clause 12(b), pending the outcome of that investigation.

#### **15 Informing us about transactions**

You must give us information on a Transaction (including the type of information which is contained on a Transaction Voucher, as outlined in clause 13(k)):

- a) by entering the Transaction immediately if you are using an Electronic Terminal; or
- b) by entering the Transaction as soon as reasonably possible after receiving the Transaction details if you are using an Online Service;
- c) by obtaining prior authorisation on all transactions if you perform the transaction with a Manual Imprinter or MOTO Pad;
  - We are not deemed to have received any information until we are satisfied it has been sent according to the Merchant Operating Guide or User Guide and any agreement with the Electronic Terminal supplier and that we have received it in this form.
- d) you must retain for at least 18 months after a Transaction:

- Card Present Transaction – the original Transaction voucher; or
  - Card Not Present Transaction – any document which is evidence of the Cardholder's request to you to charge amounts through the Card.
  - you must provide us with this evidence of the Transaction within 7 days if we ask for it. If you fail to do so, we may charge a sales Transaction back to you if the amount cannot be collected from the Cardholder.
- e) by providing us information or vouchers relating to a Transaction, you warrant that:
- all the information is accurate, complete and up to date; and
  - the Transaction and all related documentation is valid and acceptable; and
  - the Cardholder is not disputing any aspect of the Transaction and is not making any claim or counterclaim against you in relation to the Transaction.

You providing us information, or vouchers, on a Transaction is an irrevocable order to us to act in relation to that information or those vouchers in accordance with this Agreement.

If we do not receive Transaction information in accordance with the requirements of this clause, we may charge the Transaction back to you.

## **16 Transaction settlement**

Unless we agree otherwise, you must have a Nominated Account with us to enable us to:

- a) pay the full amount of all valid, acceptable sales and cash Transactions you have made; and

- b) deduct the full amount of valid, acceptable refunds you have made; and
- c) supply a monthly merchant statement showing the full amount of all Transactions processed by us during the previous month on your Merchant Facility;
- d) if you request us to provide you with a replacement statement we may apply a fee for each statement we reissue to you.

## **17 Invalid or unacceptable transactions**

Transactions are invalid if:

- a) the Transaction is illegal; or
- b) the Transaction has not been conducted according to this Agreement; or
- c) the signature on the Transaction voucher is forged or unauthorised; or
- d) the Card is not valid at the time of the Transaction; or
- e) we have otherwise told you not to accept the particular Card; or
- f) the Transaction is not authorised by the Cardholder or authorised Card user (including Card Not Present Transactions); or
- g) details on the Cardholder's copy of the Transaction voucher does not match those on all other copies; or
- h) the Transaction voucher is incomplete or illegible; or
- i) you give the Cardholder cash in a Credit Card Transaction; or
- j) you do not obtain an authorisation for a Transaction performed on a Fallback Voucher; or
- k) you charged more than your normal price for goods and services for Transactions processed with a Card other than subject to Clause 11; or

- l) the Transaction is to collect or refinance an existing debt using a Credit Card (including dishonoured cheques); or
- m) someone other than you provided the goods or services listed; or
- n) you didn't supply or don't intend to supply the goods, services or cash listed; or
- o) the Transaction was conducted in a currency other than the Australian currency; or
- p) this Agreement was not in force on the date of the Transaction; or
- q) the Transaction was conducted prior to the facility being made available to you; or
- r) a Card Not Present Transaction is processed and we have not authorised you to accept Card Not Present Transactions; or
- s) you did not record reasonable identification details of the Cardholder or the validity dates on the Card for a Card Not Present order; or
- t) you did not record reasonable identification details of the Cardholder when you keyed details of an electronic Transaction into the Electronic Terminal; or
- u) you utilise the facility to direct funds to your own Card or account; or
- v) you have not complied with the requirements in any of the documents listed in this Agreement; or
- w) authorisation for the Transaction is declined for any reason; or
- x) the Cardholder disputes the Transaction for any reason and we have no further chargeback rights to recover the Transaction on your behalf; or
- y) the Cardholder makes a claim for a set-off or a counterclaim.

We may refuse to accept a Transaction if it is invalid or unacceptable, or may charge it back to you if we have already processed it.

We may apply a processing charge for each chargeback received.

You undertake to effect best practises to minimise fraud and chargebacks.

## **18 Records**

- a) You must securely, in compliance with the PCIDSS, keep records of accounts, receipts, invoices and other documents relating to your obligations in this Agreement for a period of 18 months from the date of the Transaction; and
- b) you must keep records of your Merchant statements. An additional charge will apply to statement reprint requests; and
- c) you must allow us to examine your records relating to any Transaction; and
- d) you cannot sell, purchase, exchange or provide any information or document relating to a Cardholder, a Cardholder's number or a Transaction to any person except:
  - us; and
  - your business agents; and
  - the Card issuer; and
  - as required by law.
- e) Any documents containing a Card number must be securely stored in compliance with the PCIDSS and must, subject to any legislative requirements, be destroyed by you after a period of 18 months in a manner that makes the information unreadable; and

- f) You must ensure that you do not store any prohibited data including full magnetic stripe, Card Verification Value (3 digit code normally found on the back of the card) and PIN blocks; and
- g) you must make the documents relating to your obligations under this Agreement available to us on request during the period for which you are obliged to keep them. If you do not do so, and as a result we are unable to recover an amount from a person in relation to a Transaction, we may debit your Nominated Account with the amount of that Transaction.

### 19 EFTPOS Merchants

If you are an approved Bendigo Bank EFTPOS Merchant the following conditions apply to your facility:

- a) we must supply you with Manual Imprinters (if specified in the letter of offer) and relevant stationery, including Transaction Vouchers. If you choose to use an Electronic Terminal, it must be supplied by us. The fees and charges are set out in the Letter of Offer;
- b) Electronic Terminals, Manual Imprinters and all related equipment and software supplied by us remains our property.  
You are responsible for any loss or damage to any of our equipment or software caused by fire, theft, explosion, flood, civil commotion or other act in or around the Premises. You must pay the full cost of replacing or repairing it. A reasonable replacement value may be determined at our sole discretion.  
You must not part with possession or control of Bendigo Bank equipment or software unless we request you to do so.

- c) you must:
  - arrange a secure site at the Premises for installation of the Electronic Terminal and software.
  - ensure that this site meets our security and technical requirements.
  - bear the cost of providing a telephone line dedicated to the Electronic Terminal and pay the on-going rental of that line.  
All equipment and software which you use in conjunction with the terminals must conform to specifications we give you.
- d) you must not remove the Electronic Terminal and software owned by us to a new location or make any alterations or additions without prior written consent by us. If consent is given by us to relocate, alter or add to your terminal, you have to bear all the associated costs.
- e) you must ensure that you use the Electronic Terminal and any related equipment and software according to the instructions in this Agreement, the User Guides provided to you upon installation and any other directions we give you. You must comply with all messages we send you through the terminal. You may use the Electronic Terminal to accept Cards for:
  - sending Card Transaction information to us; and
  - crediting funds to your Nominated Account in payment of goods and services sold to Cardholders and cash supplied to them by you; and
  - debiting the Cardholder's Account.  
We can debit your Nominated Account when goods already paid for via a Card are returned. Unless there is a

terminal breakdown all refunds should be processed electronically up to a specified value. Any refund exceeding this limit will have to be processed using a Credit Voucher.

- f) you must:
- take proper care of an Electronic Terminal we own and follow all our directions for its maintenance and protection;
  - pay for any repairs to an Electronic Terminal we own which are necessary because of your neglect or misuse. Under normal conditions, we will maintain our Electronic Terminal at our expense;
  - arrange for electrical safety inspection and testing of each Electronic Terminal to be conducted by an appropriately qualified person and in accordance with Australian Standard AS/NZS 3760:2010 (as amended or replaced from time to time); and
  - not allow any person except our employees, contractors or agents to service or repair any Electronic Terminal we own.
- g) you acknowledge that Electronic Terminals are electrical devices which may cause injury or other loss as a result of electrical discharge if electrical safety testing is not conducted in accordance with Australian Standard AS/NZS 3760:2010 (as amended or replaced from time to time).
- h) you must inform us immediately if an Electronic Terminal is not working or is malfunctioning, or has failed an electrical safety test. You must immediately cease to use any Electronic Terminal that has failed an electrical safety test or is overdue for

electrical safety testing. We must repair the malfunctioning Electronic Terminal as quickly as possible;

You may use the Fallback Facility to process Transactions if you have an Electronic Terminal breakdown or malfunction, or the Electronic Terminal fails an electrical safety test.

The Conditions that apply to the Fallback Facility in this Agreement apply to your Transactions during this period. We are not liable to you for any loss you incur as a result of a breakdown or malfunction of an Electronic Terminal or any related equipment.

- i) To the extent permissible under the Australian Consumer Law, our liability to you for any loss you incur as a result of the breakdown or malfunction of an Electronic Terminal (where that loss does not arise out of physical injury to any person in consequence of a safety defect in an Electronic Terminal) is limited to, at our option, the repair or replacement of that Electronic Terminal or the supply of an equivalent terminal.
- j) your Fallback Facility:

If, and only if, your Electronic Terminal is not working due to the system being unavailable or equipment failure, you can manually charge debit and credit Transactions.

When processing a Fallback Transaction you must:

- use the Manual Imprinter and the correct Fallback Voucher for the Transaction;

- complete the Cardholder details (Card name, Card number, expiry date and account type), description of goods, Transaction value and date;
- obtain phone authorisation for all credit card transactions and process these on the day of purchase. Please note that debit card transactions do not have the ability to be authorised, therefore all transactions accepted are processed at your risk;
- record the authorisation number on the Voucher;
- not use your Fallback Facility if your Electronic Terminal is working properly; and
- key enter all Transaction Vouchers into your terminal.

k) Software

- you must use any software we provide to you in accordance with our documentation and these Terms and Conditions, and solely for your own business requirements;
- you may not duplicate or distribute any software or documentation we (or our service providers) provide to you, unless for the sole purpose of creating no more back-up copies than are reasonably necessary for back-up or disaster recovery purposes;
- you may not modify or merge with other programs any software or documentation provided to you by us or any of our service providers;
- you may not use the software provided to you in any way that creates unreasonable or unwarranted interference with the Electronic Terminal;

- we are not liable to you for any loss or liability you incur as a result of your misuse of the software; and
  - we are not liable to you for any losses or liability incurred as a result of your use of the software.
- l) you must allow our employees, contractors or agents to enter the Premises during normal business hours to:
- install, inspect, maintain and remove our terminal, software, decals, stationery and any other Bendigo Bank property you have in your possession; and
  - inspect the condition and operation of the terminal owned by us.
- m) we will provide you training at our own cost together with a User Guide or Merchant Operating Guide. You are responsible at your own cost for training your employees, contractors and any other person involved in the conduct of your business so as to ensure that those persons are familiar with your obligations under the Agreement and that Transactions which are processed through a Bendigo Bank facility are processed in accordance with your obligations under the Agreement.
- n) we recommend that you have an insurance policy which covers each of our terminals for its maximum insurable value. The policy should have Bendigo Bank's interest noted.

**20 Online Merchants**

If you are an approved Bendigo Bank Online Merchant processing Transactions via:

- Website Payment Gateway; or
- Online MOTO; or

- Batch Processing; or
- PhonePOS.

the following additional conditions apply to your facility:

- a) you can only accept and process Credit Card Transactions; and
- b) you must ensure that you use the Online Service according to the instructions in this Agreement, the User Guides provided to you and any other directions we give you. You must comply with all messages we send you through the Online Service. You may use the Online Service to accept Cards for:
  - sending Card Transaction information to us; and
  - crediting funds to your Nominated Account in payment of goods and services sold to Cardholders; and
  - debiting the Cardholder's Account. We can debit your Nominated Account when goods already paid for via a Card are returned. All refunds should be processed online.
- c) we shall provide a User Guide, training, technical assistance and support services to Merchants using any of the Online Services;
- d) you must use the Online Service we provide to you in accordance with the documentation we provide and these Terms and Conditions, solely for your own business requirements;
- e) you may not duplicate or distribute any software or documentation provided to you by us or our service providers, unless for the sole purpose of creating no more back-up copies than reasonably necessary for back-up or disaster recovery purposes;

- f) you may not modify or merge with other programs any software or documentation provided to you by us or any of our service providers;
- g) you may not use the software provided to you in any way that creates unreasonable or unwarranted interference with the Online Service;
- h) we are not liable to you for any loss or liability you incur as a result of your misuse of the Online Service;
- i) our software providers are not liable to you for any losses or liability incurred as a result of your use of the Online Service.

## **21 Manual Merchants**

If you are an approved Bendigo Bank Manual Merchant, the following additional conditions apply to your facility:

- a) you can only accept and process Credit Card Transactions; and
- b) the Floor Limit for all transactions is zero. You must obtain an authorisation for all Transactions at the time of purchase and record the authorisation number on the Voucher; and
- c) Sales Vouchers, Merchant Summary and Credit Vouchers are applicable to the Manual Merchant facility; and
- d) if you have been approved by us to process Card Not Present Transactions then a MOTO Pad should be used for all of these Transactions; and
- e) you must obtain authorisation for all Card Not Present Transactions and record the authorisation number on the MOTO Transaction Summary.

Note: The above conditions are in addition to all other applicable clauses set out in the Agreement.

## 22 Data Security

- a) If you are an approved Bendigo Bank Merchant you must comply with Payment Card Industry Data Security Standards (PCIDSS) and upon request, supply us with details of your PCIDSS compliance status.
- b) If you are an approved Online Merchant you must, upon request and at pre-determined intervals, supply us with full details of your Web Application, Web Hosting Provider, Shopping Cart System, Secure Socket Layer (SSL) provider and expiration date of SSL certificate. You must tell us details of all your Service Providers and their compliance with PCIDSS. You must ensure that all your Service Providers have installed Secure Socket Layer (SSL) which meets our requirements and have renewed their SSL certificate before it expires.
- c) You must ensure that you and any of your Service Providers fully comply with the PCIDSS. Upon request, you must tell us details of all your Service Providers who facilitate Transactions with us on your behalf.
- d) You must follow the Data Breach Procedures immediately a Data Breach is suspected or known to have occurred.
- e) You must ensure that any software or hardware you purchase, create or otherwise utilise for the purpose of selling goods and/or services online does not retain its Root Password before employing it for the transmission, acceptance or storage of Card payment details. You must also ensure that all passwords are changed on a regular basis.
- f) You will indemnify us on demand against all losses, expenses and damages we may suffer:

- as a result of your failure to observe your obligations under the Agreement including any procedures set out in the Manuals;
  - as a result of MasterCard or Visa imposing fees, fines or penalties on us in accordance with the rules of any Card Scheme of which we are a member as a direct or indirect result of your failure to observe your obligations under the Agreement including any procedures set out in the Manuals;
  - as a result of any fees, fines or penalties that we are required to pay in accordance with the rules of any Card Scheme that we are a member of, as a direct or indirect result of your failure to observe any of the procedures, requirements or obligations required to be complied with by merchants under the Card Scheme.
- g) If a Data Breach is suspected or known to have occurred you must give us and our authorised representatives full access to your systems and databases to facilitate a forensic analysis to ascertain:
- what Card data has been compromised;
  - what weakness in the system permitted the unauthorised access to the data base; and
  - whether the Card data was created, deleted, altered, copied or manipulated in any manner.

You must ensure that your Service Providers give us and our authorised representatives full access to outsourced components of your system such as databases and web hosting systems.

- h) You must reimburse us for all costs of a forensic analysis where a Data Breach is suspected or known to have occurred.
- i) If a Data Breach is suspected or known to have occurred we may require you to undergo, at your expense, a full PCIDSS accreditation in order to continue processing Transactions.

### **23 Costs, fees and payments**

You authorise us to withdraw from any account you have with us, including the Nominated Account:

- a) fees, costs and charges for services and any use of your Merchant Facility as specified in the Letter of Offer or in any other document comprising the Agreement; and
- b) outstanding amounts related to Transaction refunds; and
- c) over credits paid by us on sales and cash Transactions due to errors or omissions; and
- d) all credits paid by us on sales and cash Transactions which are not valid under this Agreement; and
- e) all Taxes levied on the services we supply; and
- f) any future Taxes levied on the services we supply; and
- g) other amounts owed to us under this Agreement; and

You must pay on demand from us any debt that remains unpaid under this Agreement. We may use amounts we receive for credit to your account to pay debts you owe us under this Agreement in any order we see fit; and

- h) disputed transactions which have resulted in a chargeback being received by us without prior notice to you.

### **24 GST**

All fees, costs and charges for services and any use of a Merchant Facility are GST exclusive.

We will:

- a) add GST at the time of billing at the government regulated rate; and
- b) at all times comply with the GST legislation in performing this Agreement; and
- c) provide you tax invoices in proper form.

### **25 Advertising**

We will supply you with signs, decals and other advertising material.

You must:

- a) display prominently the Card decal supplied to you by us; and
- b) use advertising material in relation to the facility supplied by us and in a way we direct; and
- c) cease using all material supplied by us if we ask you to do so or if this Agreement or the relevant part of it terminates.

### **26 Indemnity**

You indemnify us for all losses and liabilities we incur due to:

- a) the breach by you of your obligations under the Agreement; or
- b) a dishonest or illegal act committed by you, your employees, agents, contractors or invitees; or

- c) any dispute or proceedings between you and a Customer in respect of the supply, use, quality or fitness for purpose of goods or services supplied by you to the Customer; or
- d) the way you, your employees, agents, contractors or invitees used a Merchant Facility; or
- e) any representation, warranty or statement made by you or your employees, agents or contractors to a Customer; or
- f) any error, negligence or fraud on your part or on the part of your employees, agents or contractors; or
- g) our discretion to exercise our rights under this Agreement. We agree to indemnify you for any amounts processed in accordance with this Agreement, processed properly on a Merchant Facility, and accepted as valid by our Merchant banking system but not paid into your Nominated Account. We are not liable for any losses or inconvenience you or a Cardholder suffer due to an Electronic Terminal or telephone line, internet connection error, or other fault.

You agree:

- h) that this indemnity continues after this Agreement ends and covers the forwarding of sales vouchers to other banks; and
- i) that the amounts payable under this indemnity are payable on demand; and
- j) to reimburse us any value resulting in a chargeback which has resulted after your contract was terminated.

You authorise us to debit your Nominated Account for the amount of any loss we suffer which is covered by an indemnity under this clause without reference to you.

## **27 Legal expenses**

You agree to pay all legal fees (on solicitor and client basis) and liabilities incurred by us in connection with any default by you under this Agreement, or enforcement of this Agreement by us.

## **28 Variation and waiver**

We may vary any part of this Agreement, any Operating or User Guides, the Schedule, the Mail / Telephone procedures or an annexure at any time.

You agree that we can give notice of changes to these terms and conditions, any material change to, or any significant event that affects any of the matters specified in this document in writing, (including changes to fees and charges), by an advertisement in a major daily newspaper or in any other way permitted by law.

The changes can take effect from the day we notify you or on a date we choose in the future.

## **29 Commencement**

This Agreement commences on the date of your signing the Schedule A Merchant Agreement.

## **30 Termination**

We may terminate this Agreement at any time by providing written Notice to you. Termination will be effective immediately. The Notice does not have to state a reason for termination. You may terminate this Agreement at any time by giving us 30 days written Notice.

We may suspend this agreement at any time. Suspension will be effective immediately and will remain in force for a period no greater than 45 days. You will be advised of any such suspension.

A termination fee may be charged for any terminations effected within 3 years of signing the schedule A Merchant Agreement (this is described in your Schedule A Merchant Agreement and is specific to each offer).

Without limiting the rights which Bendigo Bank may otherwise have arising from a breach of the Agreement, we may immediately terminate the Agreement by Notice to you if:

- a) you are found to be in breach of the Agreement; or
- b) an application or petition for winding up of your business is presented; or
- c) you cannot pay your debts within the meaning of the Corporations Act 2001 (Cth); or
- d) any judgement made against you in court is not satisfied; or
- e) you are declared bankrupt or there are bankruptcy proceedings issued against you; or
- f) you make a substantially incorrect, misleading or untrue statement in connection with this Agreement or a Transaction; or
- g) Bendigo Bank reasonably determines that the continued provision of the Merchant Facility to you may damage the reputation of Bendigo Bank; or
- h) you represent, permit or allow any other person to use your Merchant Facility in the operation of their business; or
- i) the merchant has received an excessive number of disputed transactions and/or chargebacks OR a higher than acceptable chargeback to sales ratio has been reached over a certain trading period.

If the Agreement is terminated, we may, in conjunction with any additional or alternative resolutions provided by law:

- j) enter upon the Premises to repossess from you any software, equipment, transaction records, documents or promotional material supplied by us or any of our contractors; and
- k) retain all monies already received from you or held in your account until our investigation has been concluded; and
- l) under Section 18N (1) (b) of the Privacy Act, if you are an individual, provide your information to a credit provider; and
- m) authorise the Bank to disclose to any Card Scheme advice of the Merchant Agreement and the reasons for termination of the Merchant Agreement.

If the Agreement is terminated you must:

- n) immediately stop using all logos and any promotional material supplied by Bendigo Bank; and
- o) immediately return to us all equipment, software, documents or promotional material supplied by Bendigo Bank or any of its contractors or copies of this material made or held by you; and
- p) immediately stop using or attempting to use our Merchant Facility; and
- q) within 30 days of termination pay to Bendigo Bank any fees which are due to us under the Agreement and remain unpaid; and
- r) acknowledge that the information concerning termination of the Merchant Agreement then becomes available to any member of the Card Scheme(s). This information, available to any member of the Card Scheme(s), may be used in assessing subsequent applications for Merchant Facilities.

### 31 Collection and use of your information

You authorise us to:

- a) collect personal information about you for the purposes of assessing your application for, and providing you with, a Merchant Facility and related services. We may obtain from any person who is involved in any Card Scheme, information about your Merchant history or personal information about you for any purpose relating to the operation of those Card Schemes. This could include information relating to previous Merchant Facilities; and
- b) disclose personal information about you to organisations that carry out functions on the Bank's behalf such as electronic network administrators, credit reporting agencies, Merchant alert agencies, information technology providers, terminal installation and maintenance technicians and other financial institutions that process your Transactions; and
- c) disclose information about your Merchant history and relevant personal information to any person who is involved in any Card Scheme, information about you for any purpose in relation to the operation of those schemes, and where the law requires or permits the Bank to do so; and
- d) disclose to any Card Scheme advice of the termination of the Merchant Agreement and the reasons for termination of the Agreement.

You acknowledge that the information concerning termination of the Agreement then becomes available to any member of the Card Schemes. This information may be used in assessing subsequent applications for Merchant Facilities.

### 32 Privacy and data security for the Merchant

If you have not taken appropriate steps to protect your customer's Card details and a Data Breach occurs, you risk financial penalties and having your Merchant facility cancelled.

If you have been assessed as meeting the criteria to comply with PCIDSS and you have not complied with PCIDSS, the Card Schemes may issue a 'Non-Compliance Fine'. These fines can range from USD\$10,000 for Level 3 Merchants to USD \$200,000 for Level 1 Merchants. We will tell you which level you are based on the volume of Transactions you process and will advise you if your merchant level changes.

You must use your best endeavours to ensure that information which you collect, use or disclose in connection with Cardholders or Transactions is protected from unauthorised access. This may include:

- a) encrypting information which you or a Customer transmits over the Internet; and
- b) protecting electronically stored information through the use of well managed password access; and
- c) allowing and encouraging your Customers to take measures to protect information which they send to you.

You should also ensure that the customer information is:

- d) relevant to the purpose of Cardholder Transaction and is up to date and complete; and
- e) protected by such security safeguards as it is reasonable in circumstances to take, against loss, unauthorised access, use, modification or disclosure, and against other misuse; and

- f) not for any other purpose than to process Cardholder Transactions.
- You agree to comply with any Privacy Law by which you are bound and any other privacy requirement notified by us.
- Unless authorised by us in writing or required by law to do so, you must not disclose a Cardholder's name or any details about their Card to any third party.

### 33 Notice of change

You must immediately notify us if there are any changes to:

- a) the details contained in the Merchant application form; or
- b) the ownership or control of your business including any delegation by way of power of attorney; or
- c) the nature of your business or business domicile; or
- d) your trading name, address or telephone number; or
- e) your ability to meet liabilities as and when they fall due; or
- f) change of Service Provider

### 34 Notice

A Notice must be:

- a) issued in writing; and
- b) delivered in person to the addressee (in our case includes one of our officers at the address last advised); or
- c) left at the address last advised; or
- d) sent by prepaid post to the address last advised; or
- e) sent by facsimile to the facsimile number last advised:

- unless we tell you otherwise in writing, Notices are to be delivered to the last address given; and
- if a Notice is sent by post, it is taken to be received on the third day after posting; and
- if a Notice is sent by facsimile, it is taken to be received on production of a transmission report by the transmitting machine which indicates that the whole facsimile was sent; and
- a Notice takes effect from the time it is delivered unless a later time is specified in it.

Any legal process or notice of legal process (for example, a summons) may be served on you or us by delivering or leaving it at your or our last advised address, or by any other method or service permitted by law.

The addressee, address and facsimile number of Bendigo Bank is:

Attention: Merchant Services Department  
Address: PO Box 480, Bendigo Victoria 3552  
Fax Number: 03 5433 9247

### 35 Your rights and our rights

You cannot transfer your rights in this Agreement to anyone else.

We can:

- a) enter this Agreement as a principal or agent; or
- b) transfer our interests in this Agreement or in a terminal owned by us; or
- c) give another person an interest in form of security over either of them without getting your consent.

The rights in this Agreement are in addition to any rights provided independently by law, and all these rights can be used by you and by us. If a right in this Agreement is breached or not enforced, you or we have the right to take action over that breach or any later breach.

### 36 Force majeure

- a) we shall not be liable for any delay or failure to perform our obligations pursuant to the Agreement if such delay is due to Force Majeure;
- b) if a delay or failure by us to fulfil our obligations is caused or anticipated due to Force Majeure, the performance of Bendigo Bank's obligations will be suspended;
- c) if a delay or failure by us to fulfil our obligations due to Force Majeure exceeds sixty (60) days, you may terminate the Agreement on providing Notice to us.

### 37 Governing law

This Agreement is governed by the law of Victoria. You and we are subject to the courts of law and appeal of that place.

We can:

- a) at any time by giving you reasonable Notice impose or create rules and regulations.

You agree:

- b) to pay the fees, costs and charges set out in the fees clause in the manner and at the times specified in that clause or if not specified as determined by us; and
- c) to pay any other fees or charges that may from time to time be imposed by us at the time and in the manner specified by us; and
- d) that we can at any time vary any fees or charges that are payable under the fees clause of the Agreement, by giving you reasonable Notice of such change.

## Glossary

**Agreement** The Agreement between you and Bendigo Bank in relation to the provision of Merchant Facilities, made up of the documents in clause 2 of these Conditions.

**Australian Consumer Law** means the Australian Consumer Law as contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

**Banking day** means on a day on which we are open for general banking business in the place where you normally conduct your general banking business.

**Bendigo Bank** means Bendigo and Adelaide Bank Limited A.B.N. 11 068 049 178 AFSL/Australian Credit Licence No 237879 which includes its successors and assigns.

**Card** means a Debit Card, Credit Card or Charge Card (or a card combining two or of more of these) providing access to a Cardholder's Account authorised by the Bank for use and issued to a Cardholder for the purpose of initiating a Transaction.

**Card not present transaction** means a Card used for payment is unable to be swiped in an Electronic Terminal or imprinted with a Manual Imprinter. Payment is processed using an approved method of processing such transactions.

**Card present transaction** means a Card used for payment is able to be swiped in an Electronic Terminal or imprinted with a Manual Imprinter.

**Card Scheme** means an organisation or payment system which manages and controls the operation and clearing of transactions. i.e. AMEX, MasterCard, Visa.

**Cardholder** means a person to whom a Card has been issued.

**Cardholder's account** means an account which has been approved by the Cardholder for access using the relevant Card pursuant to an agreement between the Cardholder and the Bank or any other financial institution.

**Chargeback** Visa and MasterCard have a dispute resolution process that is contained in the operating rule of the card scheme. This process sets out the specific circumstances and timeframes in which a member of the scheme (e.g. a bank) can claim a refund in connection with a disputed transaction on a cardholder's behalf. This is referred to as a 'chargeback right'.

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

**Credit card** means a Visa or MasterCard Card.

**Conditions** means the Terms and Conditions set out in this document.

**Customer** means a person/s who purchases goods or services from you.

**Data Breach** means any event whereby you or any of your Service Providers suspects or has knowledge of unauthorised access to confidential Card payment details.

**Disputed Transaction** When a cardholder (or their Bank) queries a transaction which has been processed to their card number.

**EFTPOS** means Electronic Funds Transfer at Point Of Sale.

**Electronic terminal** means an electronic device other than a telephone belonging to the Bank that credits and debits funds through the Bank's electronic banking system.

**Fallback facility** means a Manual Imprinter and Transaction Vouchers provided to EFTPOS Merchants for use when the Electronic Terminal is inoperable.

**Force majeure** means:

- a) any act of God; or
- b) war, revolution, or any other unlawful act against public order or authority; or
- c) an industrial dispute; or
- d) a government restraint; or
- e) any other event or cause which is not within the reasonable control of Bendigo Bank Limited.

**Letter of offer** means a letter provided to the Merchant detailing the facility and associated operational costs.

**Manual imprinter** means a device used to obtain an imprint of a Card on a Transaction Voucher used in the purchase of goods or services.

**Merchant** means the person named as Merchant in this Agreement.

**Merchant facility** Refer to Merchant Services.

**Merchant operating guide** means the current Merchant Operating Guide provided by us to you.

**Merchant services** means the services which we will provide to you under this Agreement.

**Mail or telephone order (MOTO)** means an order for goods or services received by mail, telephone, facsimile or internet.

**MOTO pad** Refer to Transaction Vouchers.

**Nominated account** A business account held by you with Bendigo Bank or other financial institution which you have nominated to be debited or credited for the purposes of this Agreement.

**Notice** A notice, request, consent or other communication related to this Agreement.

**Online service** means any Merchant Facility that allows Transaction authorisation to be obtained online through the Bendigo Payment Gateway. Facilities include:

- Website Payment Gateway; and
- Online MOTO; and
- Batch Processing; and
- PhonePOS.

**PCIDSS** means the Payment Card Industry Data Security Standards mandated by MasterCard and Visa to facilitate protection of cardholder payment data from unauthorised access, which apply to any merchant who stores or transmits Card data regardless of that storage or transmittal device.

**Premises** means each of the premises at which you conduct your business.

**Privacy law** means all legislation, principles, industry codes and policies relating to the collection, use, disclosure, and storage or granting of access rights to personal information.

**Root Password** means a password that comes from the distributor of any software or hardware that you utilise in the acceptance of Transactions.

**Schedule a Merchant Agreement** Schedule read in conjunction with the Terms and Conditions that upon execution binds the Merchant and the Bank into the Merchant Agreement.

**Secure Socket Layer (SSL)** means the encryption protocol developed by NetScape that enables sensitive information such as Card details to be passed securely between computers.

**Service Provider** means the provider of any software or hardware that you operate to assist with the transmission, acceptance or storage of Card payment details.

**Shopping Cart** means any software system supplied and used by you for the purpose of registering customer details, creating orders, providing merchant reporting or other merchant value added information, and which generally links into an online payment page that you utilise to accept Card payment details.

**Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them.

**Terms and Conditions** means this copy of Terms and Conditions provided to you.

**Transaction** means a Transaction between a Cardholder and the Merchant related to the supply of goods or services or the provision of cash by the Merchant to the Cardholder, or the processing of a refund, using a Card.

**Transaction voucher** Transaction Vouchers include:

- Fallback Voucher means a Voucher that is completed when a Transaction is processed when an EFTPOS Terminal is inoperable and an online authorisation cannot be obtained.
- Merchant Summary means a summary of all Sales Vouchers prepared for banking purposes.
- MOTO Pad means a Pad containing vouchers used for processing Mail, Telephone or Internet Order transactions.
- Credit Voucher means a voucher prepared to refund a cardholder's transaction.
- Sales Voucher means a voucher that services as

a receipt in a transaction. This also records the cardholder's details.

**User guide** means the current User Guide provided by us to you.

**Web Application** means the software that you utilise to advertise the sale of goods and/or services over the Internet.

**Web Hosting Provider** means the provider of any software or hardware that you operate to assist with the transmission, acceptance or storage of Card payment details.

**Website Payment Gateway** means a secure method for authorising Transactions over the Internet through a system accredited by us.

**We / us** means Bendigo and Adelaide Bank Limited, and its successors and assigns.

**You** means the Merchant. If there are more than one, you means each of them separately and every two or more of them jointly. You includes your successors or assigns.

## Fraud prevention for Merchants

Listed are some tips to help minimise the risk of your business being affected by fraud. Remember that the best course of action is awareness and prevention.

- Check the name on the card fits the customer ie. a male is not using a female's card.
- Confirm the card number matches the abbreviated number printed on an EFTPOS receipt.
- Keep the card until you check the signature.
- Be wary of unusual shopping behavior and multiple declines.
- Don't split a transaction over multiple cards.
- When the card is present, swipe the card or take a manual imprint – never hand key the card number.
- If you elect to key enter a transaction (we recommend you do not), be aware that you are exposing yourself to chargeback potential. If the card is present it should always be swiped through the terminal as evidence that the card existed. If you did take this action, one possibility that may assist you would be to take a manual imprint of the card using the imprinter in your fallback facility.
- Check the holograms and validity dates.
- Don't process transactions on unsigned cards or cards with "See ID" in the signature panel.
- Be suspicious of large or unusual phone or internet orders, especially from overseas.
- If the goods are paid for over the phone, when the goods are collected ask for the card and take an imprint.
- Especially for phone and internet orders, deliver goods to a person in a building and ask for ID.
- For internet, phone or mail orders confirm your customer is the genuine cardholder. Your business will be liable for losses in a dispute situation.

- If you have any reservations or concerns in regards to a transaction please contact Merchant Services on 1300 132 741 prior to processing.
- Authorisation is not proof of identity or guarantee of payment. It simply confirms funds are available and the card hasn't been reported lost or stolen.
- Never process transactions for someone else. You will be liable in a dispute situation.
- Never fulfill requests for goods that you don't normally trade in or sell.
- Keep your terminal secure at all times and minimise the number of people who know your refund password.
- Protect your customer's PIN – never point cameras at terminals.
- Securely store transaction receipts containing full card details.
- For terminal service or exchange, ask for bank identification.
- If you're not comfortable accepting card payment and the customer won't provide another form of payment, don't proceed with the transaction.
- If you are suspicious call 13 25 15 and ask for extension 500 or code 10. Your safety is paramount – never put yourself in danger.
- If your dial up EFTPOS device has been supplied with a privacy shield, this shield must be kept on the device at all times to provide security and protect the cardholder's privacy when processing transactions. In the event that the privacy shield is lost or broken please contact the Bank to request a replacement as soon as possible.

It is your responsibility to ensure that the person placing an order is the authorised owner of the plastic card (refer clause 10(b), clause 13(d) third bullet point, clause 14, clause 17(f), and clause 17(y) of the Merchant Terms and Conditions). In the event of a dispute the onus is on you to prove the goods or services were provided to the rightful owner. Failure to prove this will result in the full value of the transaction being debited from your account, plus any dispute fee. The examples provided are not a complete list of measures to minimise fraudulent behaviour or risks associated with merchant facilities. Bendigo Bank is not liable for any loss or damage suffered by you in reliance on this list of examples.

