

# Merchant General Terms

Version: June 2023

## Background

1. Navalo Financial Services Group Limited trading as Payright (ABN 24 605 753 535) of 42 Cambridge Street, Collingwood, VIC 3066 (**Payright**) is a provider of payment plans that allow customers to purchase goods and services from Participating Merchants by utilising Payright Finance provided through a Payright Account. Payright will pay the Settlement Amount to the Participating Merchant and recover the Payright Finance amount (plus any applicable fees and charges) from the customer in a series of regular scheduled payments.
2. Payright is pleased to offer to appoint the Merchant as a Participating Merchant and to enter into a Merchant Agreement which is comprised of and subject to the following:

(a) these General Terms – containing the general terms and conditions applicable to the appointment of the Merchant as a Participating Merchant

(b) Additional Terms – which sets out the fees payable by the Merchant (defined below as Merchant Fees) in connection with its appointment as a Participating Merchant and its ability to offer Payright Finance to its customer and other contractual terms applicable to the Merchant.

(c) Payright Policies and Procedures.

(d) Merchant Application Form – a copy of the Merchant Application Form which includes key details of the Merchant relevant to the rights and obligations of the parties under this Agreement.

(e) Payright Product Exclusion List.

(the **Offer**).

1. Payright has provided the Merchant with advance notice of the Offer and the Agreement and the Merchant has had sufficient time and opportunity to consider, interrogate and understand the terms and conditions of this Offer.
2. The Merchant's acceptance of the Offer will occur when the Merchant agrees to its terms in writing or by conduct in introducing customers to make an Application.

Upon acceptance of this Offer, the Merchant will become a Participating Merchant subject to the terms of the Agreement.

## General terms

### 1. Definitions and Interpretation

1.1 In this Agreement:

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

**Agreement** means the agreement between Payright and a Participating Merchant.

**Application** means the customer's application for a Payright Account through which the customer can obtain Payright Finance which will be applied toward the cost of a purchase by the customer from the Participating Merchant. The Application may be either a Customer Led Application or a Merchant Led Application.

**BNPL Code** means the Australian Finance Industry Association (AFIA) Buy Now Pay Later code of practice dated 01 March 2021 and as updated from time to time.

**Credit and Repayment Schedule** means the schedule prepared by Payright as part of the customer's Application in respect of a proposed purchase that sets out the details of the Payright Finance amount, applicable fees and charges, loan term and repayment obligations, including amount and frequency. The Credit and Repayment Schedule will be made available to customers electronically.

**Customer Terms and Conditions** means the terms and conditions applicable to and provided to a customer in relation to an Application for a Payright Account.

**Customer Led Application** means an Application which is completed and submitted by a customer to Payright, including electronically via the Merchant's website as part of the customer's online purchase from a Participating Merchant or in hard copy form or via Payright's call centre.

**Confidential Information** means all confidential information of a party or its related bodies (as defined in the Corporations Act 2001 (Cth) including information, in any form or media, about the business, systems or affairs of a party and the details of this Agreement other than any such information which was in the public domain at the time of its provision, became part of the public domain after its provision, otherwise than through a disclosure by the other party or any person to whom the other party has disclosed that information or came lawfully into the possession of the other party otherwise than as a result of a disclosure in breach of an obligation of confidence.

**Contingency Fund** means a sum of money set aside by Payright, representing a portion of the Residual Purchase Price that Payright will withhold from Settlement of each customer purchase plan and from which Payright may draw upon in accordance with and subject to the provisions of clause 10 of this Agreement.

**Contingency Fund Allocation** means in respect of each customer purchase plan, a withholding by Payright of a percentage of the Residual Purchase Price, as detailed in the Rates Schedule to this Agreement, to be retained in the Contingency Fund in the name of the Participating Merchant.

**Deposit** means the percentage of the purchase price that the customer must pay either directly to the Merchant or to Payright that is calculated in accordance with the terms of the Payright Policies and Procedures.

**GST** means GST within the meaning of the GST Law.

**GST Law** means the A New Tax System (Goods & Services Tax) Act 1999 (Cth).

**eCommerce Terms** means Payright's terms and conditions applicable to a Participating Merchant as set out in clause 4.3.

**Lender** means Devizo Finance Pty Ltd (ABN 21 622 104 527) the credit provider on whose behalf Payright Finance acts.

**Linked Credit Provider** has the meaning given in Schedule 2 to the Competition and Consumer Act 2010 (Cth).

**Merchant** means a supplier of goods or services who has completed a Merchant Application Form.

**Merchant Fees** means the fees and charges specified in the Additional Terms.

**Merchant's Direct Debit Account** means the account details provided by the Participating Merchant to Payright for the purpose of the direct debit payments authorised pursuant to this Agreement.

**Merchant Led Application** means an Application which is completed and submitted by a Participating Merchant on behalf of a customer to Payright.

**Participating Merchant** means a Merchant authorised by Payright to act on behalf of Payright and the Lender to offer Payright Finance to its customers as set out in this Agreement.

**Payright** means means Navalo Financial Services Group Limited trading as Payright (ABN 24 605 753 535) and any wholly owned subsidiary of Navalo Financial Services Group Limited and their successor(s) and assignee(s) including the Lender.

**Payright Account** means the unsecured credit facility provided by Payright to the customer pursuant to which the customer accesses Payright Finance in respect of purchases at Participating Merchants.

**Payright Finance** means the consumer credit or loan made available to the customer through their Payright Account which is applied to wholly or predominantly pay for the Residual Purchase Price of the goods or services acquired by the customer from the Participating Merchant.

**Payright Portal** means the online portal which is accessible to Participating Merchants.

**Payright Policies and Procedures** means the policies and procedures provided to Merchants from time to time.

**Privacy Law** means the Privacy Act 1988 (Cth).

**Residual Purchase Price** means the purchase price of the goods or services acquired by a customer from the Merchant using Payright Finance less the Deposit already paid by the customer.

**Settlement** has the definition given in clause 8.7.

**Settlement Amount** means the amount paid by Payright to the Participating Merchant at Settlement pursuant to clause 8.7.

**1.2.** In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to Melbourne, Australia time;
- (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

(i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(j) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;

(k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and

(l) if a day on or by which an obligation must be performed or an event must occur is not a business day in the place where the obligation is to be performed or event is to occur, the obligation must be performed or the event must occur on or by the next business day in that place.

**1.3.** Headings are for ease of reference only and do not affect interpretation.

**1.4.** If:

(a) a customer submits an Application to Payright, the Customer Led Application terms will apply;

(b) a Participating Merchant submits an Application on behalf of a customer to Payright, the Merchant Led Application terms will apply; and

(c) a Participating Merchant sells its good and/or services via its website, the eCommerce Terms will apply.

## **2. Appointment as Participating Merchant**

**2.1.** Upon acceptance by the Merchant of these terms and conditions, and subject to satisfactory completion of Payright due diligence and accreditation procedures, Payright appoints the Merchant as a Participating Merchant to act on behalf of Payright to carry out certain credit activities as set out in this Agreement.

**2.2.** As a Participating Merchant, the Merchant will offer Payright Finance to its customers.

**2.3.** Upon Payright's appointment of the Participating Merchant, both parties acknowledge and agree that:

(a) The Agreement is a contract relating to the provision of Payright Finance by the Lender (on whose behalf Payright acts) to customers seeking to pay for the goods or services supplied by the Participating Merchant;

(b) The Lender is a Linked Credit Provider of the Participating Merchant and the Participating Merchant may, variously:

(i) Refer customers to the Lender (via Payright); and/or

(ii) Make available to the customer the credit contracts, Applications, and offers of credit for Payright Finance; and/or

(iii) Arrange for the customer to sign credit contracts, Applications, or offers of credit at the Participating Merchant's premises;

## **3. Payright's responsibilities and undertakings**

**3.1.** Payright undertakes to:

(a) provide the Participating Merchant with all necessary training, instructions, including but not limited to technical training and support, software, logos, links, plug-ins and other support, promotional and other materials reasonably required for the Participating Merchant to be able to offer Payright Finance to its customers through its website (where

eCommerce Terms apply) and other sales channels. All materials offered and provided by Payright in connection with this Agreement remain the property of Payright and Payright provides the Participating Merchant with a non-exclusive licence to use these materials for the duration of this Agreement;

(b) provide the Participating Merchant with access to information relating to the status of customer Applications and Settlement information via the Payright Portal and provide training to Participating Merchant's nominated staff members on how to use the Payright Portal to process an Application;

(c) perform fraud and electronic identity checks and validations on all customer Applications, in accordance with its proprietary credit and underwriting policies and procedures in order to protect both Payright and the Participating Merchant;

(d) to implement and maintain security systems to facilitate customer Applications and associated transmissions of data to an appropriate Australian security standard; and

(e) use its best endeavours to comply with the laws and regulations that govern its business.

#### **4. Merchant's responsibilities and obligations**

##### **4.1. Promotion of Payright**

The Participating Merchant must:

(a) act for Payright, and therefore also the Lender (on whose behalf Payright acts), in referring, making available to, or arranging for a customer application for Payright products and services to customers;

(b) instruct relevant staff members to promote Payright directly to customers (whether in-store or online) and ensure that all Participating Merchant staff members who are promoting Payright to customers or responding to questions from customers about Payright or finance options generally, have sufficient knowledge about Payright and to answer correctly and authoritatively any questions raised by customers about Payright's products and services;

(c) complete Payright training as communicated by Payright to the Participating Merchant from time-to-time;

(d) display on its website, and where reasonable in-store, and in any customer communications such as email marketing or social media marketing all promotional material that Payright supplies to the Participating Merchant and comply with Payright's reasonable directions in relation to the use and display of such promotional material;

(e) make available to any interested customers in-store (if applicable), Payright supplied Promotional Material and if the application is a Merchant Led Application, Application Forms and Customer Terms and Conditions and where required assist customers to complete the Application process through the Payright Portal in accordance with the Payright Policies and Procedures; and

(f) not offer Payright Finance or display the Payright logo, or permit Applications to be made by a customer in respect of any product(s) listed in the categories in the Excluded Products List or specified as excluded products in the Merchant Confirmation, as updated and amended by Payright and notified to the Participating Merchant from time to time;

##### **4.2. Merchant website**

The Merchant must, if it has a website at any time within the term of this Agreement:

(a) establish, host, maintain its website(s) and internet connection to enable its customers to access information about goods and services for which Payright Finance may be available; and

(b) make the following information prominently available on its website:

- (i) the Participating Merchant's business name, business address and ABN;
- (ii) a complete description of the goods and services offered for sale by the Participating Merchant;
- (iii) a customer service contact, including email, telephone or other electronic means for customers to contact the Participating Merchant in relation to their purchase;
- (iv) prices of goods and services in Australian dollars;
- (v) the Participating Merchant's delivery policy (if applicable);
- (vi) a cancellation and refund policy which complies with Australian Consumer Law;
- (vii) the Participating Merchant's privacy policy that complies with the requirements of the Privacy Act 1988 (Cth);
- (viii) industry standard security capabilities and the Participating Merchant's policy for secure storage and transmission of customer information;
- (ix) a link to a Payright landing page; and
- (x) the Payright logo;

#### **4.3. eCommerce Terms**

Where eCommerce Terms apply:

(a) the Participating Merchant's website(s) must:

(i) enable customers to complete an Application;

(ii) enable customers to use any approved Payright Finance to complete the purchase of its good and services through its website; and

(iii) prominently display the Payright logo on the main page and in connection with the purchase price and payment information made available on each item the Participating Merchant makes available for sale through its website, including as part of the Participating Merchant's check-out sales completion and payment procedures.

(b) If the Application process appears on the Participating Merchant's website, the Participating Merchant must immediately rectify any security or processing faults or issues in relation to the Application process, where such issues or faults relate to or are caused by the software or website infrastructure of the Participating Merchant or an agent or contractor of the Participating Merchant, and whether identified by the Participating Merchant, or Participating Merchant's agent or contractor, Payright or a customer. The Participating Merchant further agrees to provide Payright with reasonable access to its software or website infrastructure and purchase records to enable Payright to provide any necessary assistance in the rectification of such security or processing faults; and

(c) the Participating Merchant acknowledges and agrees that the approval to host Payright Applications and permit Customer Led Applications for Payright Finance on the Participating Merchant's website must be given by Payright in writing after all technical installations, training and promotional requirements have been completed to Payright's specifications and the Participating Merchant agrees not to publish on its website or promotional material or make Applications available to customers on its website until final written approval has been sent by Payright to the Participating Merchant;

#### **4.4. Information to be provided to Payright**

The Participating Merchant must:

- (a) notify Payright as soon as reasonably possible should they receive directly or become aware of any customer queries, concerns or difficulties in relation to an Application, their Payright Account or their Payright Finance and wherever possible direct such customer to Payright for resolution of their query, concern or difficulty;
- (b) provide Payright with any information Payright reasonably requests about a customer application or customer purchase that was completed or attempted using an Application and provide this information within 3 business days of receiving a written request from a Payright representative;
- (c) provide Payright with any information or reporting reasonably requested by Payright, including but not limited to information about the Participating Merchant's financial position, and provide this information within 3 business days of receiving a written request from a Payright representative.

**4.5.** Where a Merchant Led Application is performed, the Participating Merchant acknowledges and agrees that Applications must be completed in full (including, where applicable, through the Payright Portal). For each Merchant Led Application completed, the customer will be required to provide to the Participating Merchant details of a valid Australian driver's licence or Australian Passport or other appropriate documentary identification in accordance with clause 6 Agency to enable Payright to conduct appropriate customer identification. The Participating Merchant further acknowledges, that the inability of Payright to identify a customer, in accordance with Payright's prevailing processes and procedures and as otherwise required by applicable laws, will result in the customer's Application being declined.

**4.6.** The Participating Merchant further acknowledges and agrees that the decision to approve or decline an Application rests entirely with Payright. Other than through promotional materials that have been approved in writing by Payright for use by the Participating Merchant in connection with this Agreement, the Participating Merchant must not make any representations or assertions to a customer about:

- (a) the outcome of any Application;
- (b) the operation of the customer's Payright Account; and/or
- (c) their obligations to Payright.

All such customer queries must be directed to Payright.

**4.7.** The Participating Merchant further agrees to notify Payright immediately if:

- (a) Circumstances arise which have or are reasonably expected to have a material adverse effect on the Participating Merchant's business and the ability of the Participating Merchant to perform its services under this Agreement;
- (b) notify Payright immediately if it becomes aware of any investigation or enforcement proceedings by an applicable regulator, court, tribunal or other law enforcement body in relation to the Participating Merchant's compliance with Australian Consumer Law in respect of the supply of any good or services which a customer has purchased or may make an Application to purchase using Payright Finance or any other applicable law;
- (c) The Participating Merchant sells, leases, transfers, assigns or otherwise deals with its business in a way that results in a change of control as that term is defined and understood under the Corporations Act 2001 (Cth);
- (d) The Participating Merchant changes any of its trading name, business name, entity name, the address where it carries on business or changes its contact details, (whether physical or online), directors or key managers;
- (e) The Participating Merchant changes the nature, scope or type of business or product range or sales channel; or
- (f) The Participating Merchant intends to cease trading or is otherwise prevented from continuing usual business activities, has external administrators appointed or is otherwise unable to pay debts when they become due.



**4.8.** Where the Participating Merchant notifies Payright or Payright reasonably suspects that an event described in clause 4.7 has occurred, Payright may request the Participating Merchant to provide copies of documentation evidencing such event, including but not limited to copies of financial statements or administrator details, and the Merchant agrees to provide such documentation to Payright within 3 business days of Payright's written request.

**4.9.** The Participating Merchant must keep detailed records (which may include call recordings) relating to each purchase by a customer using Payright Finance. Records must evidence:

- (a) the terms and conditions governing the purchase;
- (b) the price paid by the customer for the purchase including all applicable tax invoices; and
- (c) how the Participating Merchant has complied with their obligations under the Australian Consumer Law.

These records must be retained by the Participating Merchant for a period of 9 years after the date of Settlement. The Participating Merchant must provide such records to Payright within 48 hours of receiving written request from Payright.

#### **4.10 BNPL Code Compliance**

The Participating Merchant must, at all times during the term of this Agreement meet the minimum standard required for merchants under clause 17 of the BNPL Code. A copy of this code is available via the AFIA website at [www.afia.asn.au](http://www.afia.asn.au).

### **5. Merchant warranties and undertakings**

**5.1.** As at the date of this Agreement, the Participating Merchant represents and warrants to Payright that:

(a) Where the Participating Merchant is a company, it has been validly established under the laws of its applicable jurisdiction and is in existence and no action has been taken to wind up, terminate, reconstitute or dissolve the company and that the directors who enter into this Agreement on behalf of the Participating Merchant have full and valid power to enter into this Agreement and carry out the activities and obligations contemplated by this Agreement, including all proper authorisations and consents;

(b) Where the Participating Merchant is a trustee of a trust (Trust):

(i) that the Trust has been validly established under the laws of its applicable jurisdiction and is in existence and no action has been taken to wind up, terminate, reconstitute, resettle or dissolve the Trust;

(ii) the Trust has full and valid power under the deed of trust constituting the Trust (Trust Deed) to enter into this Agreement and carry out the activities and obligations contemplated by this Agreement including all property authorisations and consents;

(iii) it has the right to be indemnified out of the assets of the Trust;

(iv) it has entered into this Agreement and the transactions contemplated by this Agreement for the proper administration and benefit of the Trust and for the benefit of the beneficiaries of the Trust;

(v) it has been validly appointed as the trustee of the Trust and is the sole trustee of the Trust; and

(vi) it is not in breach of the Trust and its obligations under the Trust Deed, including by executing, delivering and performing this Agreement;

(c) all of the information that it has provided to Payright in this Agreement and otherwise in connection with its intention to become a Participating Merchant is true and correct in every respect;



(d) that the account details that the Participating Merchant has provided as the Participating Merchant's Direct Debit Account are true and correct and that direct debiting is available in connection with the nominated account;

(e) insofar as it is aware, it is not currently under investigation or subject to enforcement orders or proceedings from an applicable regulator or law enforcement body in connection with its business activities, including but not limited to the sale and supply of goods and services available to be purchased by customers using Payright Finance; and

(f) no receiver or receiver and manager, administrator, liquidator or statutory manager has been appointed and the Participating Merchant is able to pay all debts as and when they fall due and payable and that further, the Participating Merchant is not aware of any circumstances as at the date of this Agreement or which may arise during the term of this Agreement which may mean it is unable to continue to pay such debts as and when the fall due and payable.

**5.2. The Participating Merchant undertakes to:**

(a) comply with all applicable laws that govern its business, that apply to the provision of goods and services supplied to customers using Payright Finance in connection with this Agreement and in relation to the satisfaction of its obligations under this Agreement including but not limited to the Australian Consumer Law;

(b) not to use the Payright name, logo, software, trademarks, links, plug-ins or any Payright promotional material other than as agreed and directed by Payright in writing;

(c) use reasonable care to detect and prevent fraud, unauthorised use or forgery in respect of customer Applications through the Participating Merchant website(s) or other usual sales channels;

(d) offer Payright Finance on applicable products and services offered to customers without applying any increased cost, charge or fee;

(e) enter into a legally binding agreement with the customer to supply the applicable goods or services that have been purchased by a customer using Payright Finance in accordance with terms and conditions that have been agreed between the Participating Merchant and the customer;

(f) accept liability for any conduct of any third party it contracts with in respect of the supply and delivery of goods and services to customers using Payright Finance;

(g) manage all customer relationships where Payright Finance has been used by the customer in connection with the purchase from the Participating Merchant in a way that minimises the possibility of a customer dispute between the Participating Merchant, the customer and Payright; and

(h) maintain all licenses, qualifications, registrations and approvals (including requirements for personnel providing goods or services to have such authorisations) required by law or regulation to carry out its business.

**5.3. In relation to each Application completed during the term of this Agreement, the Participating Merchant represents and warrants further to Payright that:**

(a) the Participating Merchant, its officers, employees, agents, contractors or staff members have complied with all technical and promotional requirements from Payright in relation to making Payright Finance available through to its customers and the promotion by the Participating Merchant of Payright Finance in connection with the sale of its good and services to customers;

(b) where a Merchant Led Application is performed the Application has been fully completed under the supervision of a suitably qualified and independent staff member in accordance with the Payright Policies and Procedures and has been reviewed for accuracy and completeness by a suitably qualified and independent staff member;

- (c) the Participating Merchant, its officers, employees, agents, contractors or staff members have no reason to suspect fraud or suspicious activities in relation to the Application or the proposed purchase nor have they become aware that any statement or information given in connection with the Application is false or misleading in any respect;
- (d) where a Participating Merchant Led Application is performed and where required by Payright, a suitably qualified and trained Merchant staff member has verified the identity of the applicant and has sighted the original identification documents of the customer in accordance with the requirements set out in the Payright Policies and Procedures and any Payright training as communicated by Payright to the Participating Merchant from time-to-time;
- (e) the proposed purchase – being the subject of the Application, is bona fide in all respects, made in the ordinary course of its business and the Merchant has no reason to suspect nor have they become aware that the proposed purchase is wholly or partially for commercial or business purposes;
- (f) the Participating Merchant will satisfy all of its obligations in relation to the marketing, sale, dispatch and delivery (if applicable) of goods and services that are the subject of the Application, including but not limited to the obligations of the Participating Merchant under the Australian Consumer Law;
- (g) upon completion of the sale, the customer will have title to any goods that are the subject of the Application, free and clear of all encumbrances, liens, claims or third party rights;
- (h) none of the Participating Merchant, its officers, employees, agents, contractors or staff members have done or omitted to do or will do or omit to do anything to prevent any amount owing to Payright under an accepted Application from being recoverable by Payright from the customer to the fullest extent; and
- (i) the Participating Merchant has complied with, and will continue to comply with, Payright's privacy policy and applicable Privacy Law in relation to the collection and management of personal information provided to it by customers in connection with an Application.

**5.4.** In relation to each product or service supplied to a customer in respect of which the customer has used Payright Finance:

- (a) the Participating Merchant warrants and undertakes to:
  - (i) advertise, make available to customers and comply with the terms of a fair policy for providing refunds or exchanges that complies with the requirements of the Australian Consumer Law;
  - (ii) notify Payright promptly of any request from a customer for refund or cancellation of the purchase; and
  - (iii) not provide any refund whatsoever including by way of cash, direct debit, credit or cheque directly to the customer of a purchase made by that customer using Payright Finance; and
  - (iv) to notify the customer that the Participating Merchant is responsible for:
    - the product or service purchased by the customer from the Participating Merchant;
    - customer service and dispute resolution in relation to that purchase; and
    - performance of the terms and conditions agreed between the customer and the Merchant.
- (v) direct all customers who indicate to the Merchant that they wish to make a complaint in relation to Payright Finance to Payright directly and provide the customer with contact details for Payright such that they may raise their complaint directly with Payright.

(vi) provide to Payright within 48 hours of receiving a request from Payright, any information, documentation, records (including call recordings) or evidence reasonably requested by Payright and required to assist with the efficient, effective and compliant resolution of customer complaints.

(b) the Participating Merchant authorises Payright to direct debit the amount of any refund properly and lawfully due to a customer for an unsatisfactory service, misrepresentations made by the Merchant or by Participating Merchant's sales staff about the product or service, non-delivery, delivery later than 8 weeks after purchase (unless otherwise agreed in writing by Payright), non-functioning or mal functioning product or service, returned goods or any other agreed amount to be refunded from the Participating Merchant's Direct Debit Account.

**5.5.** The Participating Merchant authorises Payright to publish the name, contact details, website address, logo, business and product description on the Payright website and in any Payright promotional materials.

## **5A. Design and Distribution Obligations**

**5A.1** To the extent that the design and distribution provisions contained in the Corporations Act 2001 (Cth) (DDO Obligations) apply to the Participating Merchant, the Participating Merchant will:

(a) comply with its obligations under the DDO Obligations;

(b) comply with Payright's codes of practice, systems, and policies and procedures relating to the DDO Obligations as notified to the Participating Merchant by Payright from time to time;

(c) comply with any reasonable direction of Payright regarding compliance with the DDO Obligations; and

(d) undertake any training which Payright reasonably directs in relation to the DDO Obligations from time to time.

## **6. Agency**

**6.1.** Where Merchant Led Applications are performed, Payright appoints the Participating Merchant as its agent for the sole purpose of collecting and verifying 'Know Your Customer' information from customers who are unable to be verified electronically according to Payright's standard processes for customer identity verification. The Participating Merchant acknowledges and accepts this limited appointment and undertakes to inform all staff involved in assisting customers with Applications of the appointment and consequential responsibilities. The Participating Merchant must send records of all customer identification documents to Payright as soon as possible after completing customer identity verification.

## **7. Indemnity**

**7.1.** The Participating Merchant indemnifies Payright, and keeps Payright indemnified, against all losses which Payright (including its officers, employees, agents and contractors) suffers or incurs, directly or consequently from:

(a) any of the warranties set out in clause 5 being untrue or inaccurate in any respect or which otherwise arises from a breach of this Agreement;

(b) any negligent act or omission by it or its officers, employees, agents or contractors made in connection with the subject matter of this Agreement;

(c) the nature of the relationship between the Participating Merchant and a customer who makes an Application including any actual or asserted representations, promises or understandings made by the Participating Merchant to the customer in relation to their Application, Payright or a Payright Account;

(d) the failure of a customer to fulfil its obligations to Payright (including, but not limited to making repayments) because of a dispute between the customer and the Participating Merchant as to the goods or services or both supplied by the Participating Merchant to the customer if the dispute remains unresolved for at least 21 days after the customer's

first payment default or such other time frame as Payright and the Participating Merchant agree is reasonable in the circumstances;

(e) any legal proceedings or regulator investigation or enforcement activity brought against the Participating Merchant in connection with any alleged breach of the Australian Consumer Law or other customer complaint and includes any loss of damage suffered by Payright as a result of any associated media publications; and

(f) any third party financial institution lawfully reclaiming funds from Payright where those funds had been transferred to Payright as a result of fraudulent actions by or on behalf of the Participating Merchant's customer where such fraudulent actions are in Payright's determination, reasonably apparent to or ought to be reasonably apparent to the Participating Merchant.

## **8. Approving Applications and Payment of Settlement Amount**

**8.1.** Where a Merchant Led Application is performed, the Participating Merchant must:

(a) oversee the customer's Application and confirm that the requirements of this Agreement and the Payright Policies and Procedures have been met;

(b) complete any parts of the Application Form required to be completed by the Merchant pursuant to the Payright Policies and Procedures;

(c) adhere to the maximum credit limits and deposit amounts imposed by Payright for all Applications when offering a Payright Account to customers;

(d) before submitting an Application to Payright, ensure:

(i) that the customer provides acceptable identification (one must be a valid Australian driver's licence or Australian Passport) and that the customer's name and contact details as set out in the Application Form match the details set out in the identification provided;

(ii) the customer is 18 years of age or older;

(iii) that the direct debit details have been completed in the Application Form in full and if a credit card has been used to pay the deposit that the details of the same credit card are included for the purpose of the ongoing direct debit payments;

(iv) for Applications on paper, the customer has received a copy of or access to the Customer Terms and Conditions and disclosure of fees and charges that include, where relevant, the Participating Merchant identification number; and

(v) the customer has signed or digitally accepted the Application Form.

**8.2.** The Participating Merchant must not approve or deny an Application or purport to do so. Only Payright may accept or decline the Application at its sole and absolute discretion.

**8.3.** If Payright declines a Merchant Led Application that is submitted through the Payright Portal, the Participating Merchant must notify the customer of the same and send all information relating to the declined application to Payright and delete any information relating to that Application from the Participating Merchant's files or systems.

**8.4.** If Payright approves an Application, the customer will pay any applicable Deposit after the expiry of any applicable cooling off period, complete the Participating Merchant's usual sales completion processes for the purchase of goods or services from the Participating Merchant and the Participating Merchant will enter into a legally binding agreement with the customer (Customer Contract) to supply the applicable goods or services in accordance with terms and conditions that have been agreed between the Participating Merchant and the customer, including any applicable cooling off period and delivery and/or installation terms.

**8.5.** After completion of the steps required by clause 8.4 above, the Participating Merchant must, in accordance with the Customer Contract:

- (a) supply the goods or services immediately to the customer;
- (b) arrange the delivery of the goods or service to the customer (such delivery must, unless otherwise agreed by Payright in writing, be delivered within 8 weeks); or
- (c) if the goods or services require customisation, manufacture and/or installation by the Participating Merchant, the Participating Merchant must commence work on such goods or services and arrange with the customer for installation (as applicable).

**8.6.** Upon completion of the steps described in clauses 8.4 and 8.5 above (and, if clause 8.5(c) applies, once the goods or services have been installed), the Application may be activated either by the Participating Merchant via the Payright Portal or automatically by Payright in accordance with procedures agreed between Payright and the Participating Merchant.

**8.7.** Subject to clause 11.1 and 11.2, Payright will pay the Participating Merchant the Residual Purchase Price (and, if Contingency Fund Terms apply, less any Contingency Fund Allocation pursuant to clause 10) (the Settlement Amount), as soon as reasonably possible and wherever possible, by the next business day after the Application is activated (Settlement).

## **9. Payright Customer Due Diligence**

**9.1.** Payright will perform customer due diligence in connection with each customer Application that is made in connection with a proposed purchase from the Participating Merchant.

**9.2.** Payright's customer due diligence measures that are performed before an Application is approved may include, but are not limited to, verifying customer's identity through electronic identity verification procedures, conducting and reviewing credit checks using a third party credit reporting bureau, requesting and reviewing bank statement information through third party providers.

**9.3.** In addition to customer due diligence performed as part of a customer's Application, Payright may, from time to time, conduct additional customer due diligence after an Application has been approved by Payright but before Settlement. This may include conducting a welcome call with the customer to confirm that the customer exists and the purchase was bona fide in all material respects. Unless Payright agrees in writing to a longer approval period, Payright reserves the right to revoke approval of an Application at any time before Settlement and where the Application has not been activated for any of the following reasons:

- (a) expiry of a reasonable period (being not less than 60 days) after the Application was approved by Payright;
- (b) Payright is not satisfied with the outcome of additional due diligence; or
- (c) any of the circumstances set out in clause 11.1 (a) to (f) apply.

## **10. Contingency Fund**

**10.1.** The provisions of this clause apply if Contingency Fund Terms are expressed to be applicable in the Additional Terms.

**10.2.** In respect of each customer plan introduced by the Merchant, Payright will at Settlement, withhold an amount of money equal to the Contingency Fund Allocation and retain such monies in a Contingency Fund in accordance with this clause 10.

**10.3.** At the end of the calendar month in which the 90th day after the first Settlement occurs and thereafter at the end of the calendar month in which the following 90 day anniversary occurs (Review Date), Payright will review the performance of each individual customer plan (whether or not a Contingency Fund Allocation was retained in respect of such customer plan) to determine whether each customer has not missed or been late on 2 or more scheduled repayments during the 90 day review period or is not otherwise in arrears at the Review Date (Release Conditions).

**10.4.** Provided the customer has met the Release Conditions, Payright will pay the Merchant an amount equal to the Percentage of Contingency Fund Release as specified in the Additional Terms for each plan within five (5) business days of the Review Date. For the avoidance of doubt, Payright shall only be able to release monies to the Merchant under this clause where there are sufficient funds available in the Contingency Fund.

**10.5.** If the customer does not meet the Release Conditions, the monies will remain in the Contingency Fund until the following Review Date when Payright will again review the plan performance again to determine whether the Release Conditions have been met.

**10.6.** Payright will continue to review each customer plan at each Review Date during the term of a customer plan or until the customer plan is repaid in full.

**10.7.** Subject to sufficient monies remaining in the Contingency Fund, when the customer plan is repaid in full, the balance of monies retained in the Contingency Fund for that plan will be released to the Merchant.

**10.8.** Payright will provide the Merchant with a statement each month showing the balance of monies held in the Contingency Fund, the amount of monies released, retained and recovered at each Review Date and the total amount of customer missed payments relative to the total Contingency Fund balance. For the avoidance of doubt, in accordance with applicable Privacy Law, Payright will not include details of individual customer missed payments, retained amounts or recoveries in the monthly statement.

**10.9.** At each Review Date, Payright will calculate the total amount of customer missed payments for all plans introduced by the Merchant, and Payright shall recover the amount of customer missed payments from the Contingency Fund balance. Payright will reimburse into the Contingency Fund any customer missed payments previously deducted under this clause 10.9 that have subsequently been repaid within 12 months of the date of the customer missed payment.

**10.10.** If the balance of the Contingency Fund is insufficient to cover the total amount of customer missed payments, any amounts remaining after the monies in the Contingency Fund have been exhausted, shall be borne by Payright and the Contingency Fund shall be treated as in a negative balance to the value of these remaining amounts.

**10.11.** In addition to its rights in relation to customer missed payments, Payright, following its usual collections and write off procedures, may elect to write-off the total amount owing under a customer plan and shall recover the entire write-off amount from the Contingency Fund. If the balance of the Contingency Fund is insufficient to cover the write-off amount(s), any amount remaining after the monies in the Contingency Fund have been exhausted shall be borne by Payright and the Contingency Fund shall be treated as in a negative balance to the value of these remaining amounts. Payright will reimburse into the Contingency Fund any previously written-off amounts deducted under clause 10.11 if Payright recovers monies from the customer within 12 months of the date of the write-off (less any reasonable collection costs).

**10.12.** Whilst the Contingency Fund is in negative balance, any Contingency Fund Allocation that is received in respect of new customer plans or any recovered customer missed payments or written-off amounts, shall be applied in the first instance to reduce the negative Contingency Fund balance. Once the Contingency Fund is returned to a positive balance it will continue to operate subject to the terms of this Agreement.

## **11. Settlement Withholding and Reimbursement**

**11.1.** Payright may withhold payment of the Settlement Amount to the Merchant if Payright reasonably considers that:

(a) the Merchant has failed to comply with a term of this Agreement or follow the correct procedures;

- (b) the Merchant has not complied with its obligations under clauses 8.5 and 8.6 or the product is faulty, or is not operating or functioning in accordance with product specifications and Merchant representations;
- (c) Payright learns or reasonably suspects following completion of customer due diligence that the information provided to Payright in connection with an Application is incorrect or incomplete and that incomplete or incorrect information should have reasonably been detected by the Merchant as part of its usual sales completion and website security procedures (where applicable);
- (d) the Application may be fraudulent or suspicious, and that such fraudulent or suspicious activity could or should have been detected by the Merchant as part of its usual sales completion and website security procedures (where applicable);
- (e) in respect of Merchant Led Applications submitted through the Payright Portal, following completion of Payright's usual customer due diligence measures, Payright reasonably believes the customer does not exist or the customer denies submitting the application, or
- (f) it believes that it has valid legal reasons for doing so.

**11.2.** Additionally, Payright may elect to pay the Settlement Amount to the Merchant in instalments at times corresponding to the customer's payments of instalments to Payright if:

- (a) it has not completed its verification of the Application;
- (b) there is some defect or error in the Application; or
- (c) where otherwise agreed in writing between Payright and the Merchant.

Where Contingency Fund Terms apply, for the avoidance of doubt, if Payright elects to pay the Settlement Amount in accordance with this clause, Payright will not withhold a Contingency Fund Allocation in respect of the same Application.

**11.3.** Where Settlement has occurred, and Payright is unable to recover from the customer the repayments, fees or charges payable by that customer because of:

- (a) the customer confirming to Payright that the goods or services that were purchased from the Merchant using Payright Finance were not received by the customer in accordance with the terms and conditions for delivery agreed between the customer and the Merchant and/or the Merchant has not complied with its obligations under clauses 8.5 and 8.6 (Non-Delivery);
- (b) a customer dispute with the Merchant in connection with the goods or services where the customer has confirmed to Payright that this dispute is ongoing (Customer Dispute);
- (c) non-compliance by the Merchant with the terms and conditions of this Agreement (Merchant Non-Compliance); or
- (d) fraudulent or other illegal activity by Merchant (Illegality)

and:

- in the case of (a), (b) or (c) above, the Non-Delivery, Customer Dispute, Merchant Non-Compliance continues beyond a period of 7 days from the date on which Payright notifies the Merchant of the Non-Delivery, Customer Dispute, Merchant Non-Compliance and in relation to a Customer Dispute, the Merchant is unwilling or refuses to act reasonably to resolve the subject matter of the dispute with the customer, which includes but is not limited to failure by the Merchant to respond to a request from Payright for information in relation to a Customer Dispute within the timeframe required by this Agreement; or
- in the case of (d) above, immediately on Payright reasonably determining that Illegality has occurred, then, Payright may collect those repayments, fees and charges from the Merchant (Reimbursement). These will be deducted from any payment or payments made by Payright to the Merchant in respect of any future



Settlements or by direct debit from the Merchant's Direct Debit Account. Payright will reimburse these amounts to the Merchant if Payright ultimately recovers them from the customer (less any collection costs that may be incurred). Payright and the Merchant agree to use their best endeavours to resolve any matter resulting in a Reimbursement to their mutual satisfaction.

## 12. Merchant Fees

**12.1.** The fees and charges payable by the Merchant to Payright in connection with this Agreement are set out in the Additional Terms.

**12.2.** The Merchant must pay the Merchant Fees to Payright in the manner contemplated by this Agreement.

**12.3.** Merchant Fees will either be:

(a) deducted by Payright from payments by it to the Merchant of the Settlement Amount payable in connection with an activated Application; or

(b) by direct debit from the Merchant's Direct Debit Account (including the terms set out in the Additional Terms).

**12.4.** From time to time, Payright may initiate a review of the Merchant Fees. Any change to Merchant Fees will constitute a variation of this Agreement in accordance with Clause 18.3.

## 13. Goods and Services Tax

**13.1.** Each party to this Agreement acknowledges and confirms that it is registered for GST at the time of entering into this Agreement and that it will immediately notify the other party if it ceases to be registered.

**13.2.** All prices or other sums payable or consideration to be provided in connection with this Agreement (including fees and charges listed in this Agreement) are exclusive of GST unless otherwise stated.

**13.3.** Despite any other provision of this Agreement, if GST is imposed on any supply made under this Agreement, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.

**13.4.** If a party is required to reimburse or indemnify another party for any expense, loss or outgoing incurred by the other party, the amount required to be reimbursed or indemnified by the first party will be the sum of the amount of the reimbursable expense to which the other party is entitled and any GST payable in respect of that supply provided that the other party's recovery from the first party is a taxable supply.

**13.5.** If the consideration for a taxable supply is varied under this Agreement, the GST must be calculated on the varied consideration.

**13.6.** Any GST payable in connection with a supply must be paid at the same time payment is made for the supply.

**13.7.** If a GST inclusive price is charged or varied under this Agreement, the supplier must provide the recipient with a valid tax invoice or adjustment note at or before the time of payment or variation.

**13.8.** The parties to this Agreement agree that a recipient of a taxable supply may issue a Recipient Created Tax Invoice (as defined under the GST Law) to the supplier and if so, the supplier will not issue a tax invoice in respect of the same supply.

## 14. Suspension of services

Payright may suspend the provision of services to the Participating Merchant under this Agreement at any time and without prior notice to the Participating Merchant if Payright reasonably considers that to continue to provide the

services would expose the Participating Merchant or Payright or customers to risk of fraud, financial loss, reputational or other damage. Payright and the Participating Merchant agree to cooperate to restore services as soon as reasonably possible.

## **15. Termination**

**15.1.** Payright can terminate this Agreement immediately upon written notice to the Merchant if the circumstances warrant immediate termination, including but not limited to Payright reasonably considering that to continue the Agreement would expose Payright or customers to risk of fraud, financial loss, reputational or other damage or the Contingency Fund operating a nil or negative balance following Payright recovery pursuant to clause 10 (where Contingency Fund Terms apply). At all other times Payright must give the Merchant at least 30 days notice of the termination of this Agreement.

**15.2.** The Merchant can terminate this Agreement by providing Payright with 30 days written notice or if Payright has notified the Merchant of a variation to the contract pursuant to clause 18.3, immediately upon written notice.

**15.3.** Termination of this Agreement will not affect any rights of a party that accrued prior to termination or any rights of Payright in respect of an Application made before termination. Where Contingency Fund Terms apply, notwithstanding termination, the Contingency Fund will continue to operate in accordance with clause 10.

**15.4.** On termination of this Agreement, the Merchant must return to Payright all information including (but not limited to) Confidential Information, all training and promotional material provided by Payright and any other information or documents reasonably requested by Payright to be returned and remove all references or links to Payright from its website and promotional material, uninstall any software, plug-ins, logos or other items provided by Payright and comply with any other reasonable written request of Payright.

## **16. Confidentiality**

**16.1.** Each party acknowledges that the Confidential Information of the other party is valuable to the other party and undertakes to keep the Confidential Information of the other party secret and to protect and preserve the confidential nature and secrecy of the Confidential Information of the other party. However, a party may disclose Confidential Information of the other party to its legal and professional advisers in order to advise that party in connection with the exercise of rights and performance of obligations under this Agreement, to any representative of that party provided that the disclosure is made for the purpose of this Agreement and the party imposes an obligation upon the representative to maintain the confidentiality of that material, or to the extent disclosure is required by an applicable law or court order provided that the disclosing party gives reasonable advance notice of such disclosure (where legally permissible) to the other party in order that the other party has an opportunity to attempt to preclude or limit such disclosure.

## **17. Direct Debit**

**17.1.** By agreeing to be bound by this Agreement, the Merchant authorises Payright to arrange for funds to be debited directly from the bank and account nominated as the account for direct debits by the Merchant. The Merchant authorises Payright to debit all amounts that the Merchant owes to Payright under this Agreement as and when such amounts become due and payable including, without limitation, any amounts the Merchant is required to pay to Payright under clauses 7 and 11.3.

**17.2.** Where a debit payment is due on a day that does not occur in a particular month then Payright will arrange for the payment to occur on the last business day of the month.

**17.3.** If the payment is due on a day that is not a business day, Payright will arrange for the payment to be debited on the immediately following business day.

**17.4.** The Merchant must contact Payright (and not its bank) if it wishes to change any arrangements in relation to the direct debit.

**17.5.** The Merchant must ensure that it has sufficient funds in its nominated account to allow a scheduled direct debit payment to be made. If there are insufficient funds then:

- (a) the Merchant may be charged a fee or interest or both by its bank;
- (b) Payright may charge the Merchant any additional fees or costs incurred as a result of the failed payment; and
- (c) the Merchant must arrange for the scheduled payment to be made by another method or arrange for sufficient clear funds to be in its account by an agreed time so that Payright can process the payment.

**17.6.** It is up to the Merchant to verify that the direct debit payments deducted from its account are correct. The Merchant must notify Payright immediately if it believes that there has been an error in debiting its account. Payright will investigate any such query and deal with it promptly and in good faith. If the Merchant's query cannot be resolved to its satisfaction immediately, Payright will investigate further and notify the Merchant of when it can expect a further response. If Payright determines that it has incorrectly debited the Merchant's account then it will adjust the account accordingly by crediting the account or otherwise providing the Merchant with a refund. If Payright determines that the Merchant's account was not incorrectly debited, then Payright will inform the Merchant of the reasons why.

**17.7.** If Payright is required to pay GST on a supply made by it in connection with the direct debit arrangements, then the Merchant must pay to Payright an amount equal to the consideration payable or the supply multiplied by the prevailing GST rate on demand.

**17.8.** The information relating to any direct debit payments will be kept confidential by Payright and Payright will make all reasonable effects to ensure that any such information is kept secure and to ensure that any employees or agents of Payright who have access to the information about the Merchant (including its account details) do not make any unauthorised use, modification, reproduction or disclosure of that information. Payright will only disclose the information it has about the Merchant to the extent specifically required or authorised by law, for the purpose of managing the direct debit payments in accordance with this Agreement or with the Merchants implied or express consent.

## **18. General matters**

**18.1.** Relationship. Except where this Agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

**18.2.** Survival. An indemnity of obligation of confidence under this Agreement is independent and survives termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement.

**18.3.** Variation. Acting reasonably and to the extent necessary to protect its legitimate business interests, Payright may vary any provision of this Agreement at any time provided that if it does, it must notify the Merchant in writing of the changes:

(a) if the changes relate to an increase in fees and charges, including introducing new fees and charges, the amount of them or the time of payment (Fee Increase) and in Payright's reasonable opinion the changes are reflective of increases in Payright's funding costs and/or in Payright's reasonable opinion the changes are necessary to reflect the risk of financial loss associated with the Merchant's customers, at least 7 days prior to the Fee Increase commencing; or

(b) if (a) does not apply, at least 30 days before they commence or a shorter period as required by law.

Any amendment or variation of the Agreement does not give rise to a new agreement.

**18.4. Waiver.** Payright does not waive a right, power or remedy if it fails to exercise or delays in exercising any right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver by Payright of a right, power or remedy must be in writing and signed by Payright.

**18.5. Assignment.** Payright may assign or transfer its rights under this Agreement without notice to the Merchant. The Merchant must not assign or transfer its rights under this Agreement without the prior written consent of Payright.

**18.6. Governing law.** This Agreement is governed by the laws of Victoria, Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria, Australia.

**18.7. Notices.** Any notice provided by either party under this Agreement must be made in writing and sent to the address of the party set out in this agreement or otherwise notified by a party in writing.

**18.8. Liability for goods and services.** Payright confirms and the Merchant acknowledges that Payright bears no responsibility or liability whatsoever in relation to the goods or services sold or provided by the Merchant in connection with an Application.

**18.9. Severability.** If any of the terms of this Agreement are held to be invalid, illegal or unenforceable for any reason then the affected terms will be severed from the Agreement and the remaining terms will remain valid and enforceable to the maximum extent possible.

**18.10. Marketing.** The Merchant acknowledges and agrees that Payright may use the Merchant brand, logo and trademarks for the purposes of publicising the Merchant's relationship with Payright under this Agreement. The Merchant provides Payright with a non-exclusive, royalty-free licence to use the Merchant brand, logo and trademarks for this purpose and other reasonable marketing activity undertaken by Payright during the term of this Agreement.

**18.11. Commissions to Merchant.** If Payright offers a commission to the Merchant to introduce Customers, Merchant agrees that prior to Customers making Applications it will disclose to Customers that it has a commission arrangement with Payright.

**18.12. Commissions to third parties.** The Merchant acknowledges that Payright may pay commissions to third parties to introduce prospective merchants.

#### **Payright Product Exclusion List**

*Payright Finance shall not be permitted in connection with the purchase by a customer from the Merchant of goods or services that fall within the below industry categories:*

1. Betting and Gambling, including Lottery Tickets, Casino Gaming Chips, Off-Track Betting, and Wagers at Race Tracks;
2. Weapons and munitions
3. Any other illegal activities; or
4. Any goods or services reasonably considered by Payright to be inconsistent with Payright's moral and ethical values.