

General Conditions – January 2014 Version

1. Introduction

1.1 Authorisation

Subject to the restrictions contained in this Agreement, the Promoter authorises the Retailer, and the Retailer agrees, to facilitate the Promoter's marketing and promotion of, and the participation by Customers in, the Bonus Cash Program.

1.2 Rights reserved

Nothing in this Agreement prevents the Promoter from authorising other persons to participate in, market and/or promote the Bonus Cash Program (or to facilitate any of those things), even where those persons conduct similar businesses to the Retailer in similar locations.

2. Term of Agreement

2.1 Term

Subject to clause 2.2, this Agreement commences on the Commencement Date and continues for the period specified in item 3 of the Schedule (unless terminated earlier in accordance with this Agreement).

2.2 Monthly agreement

If the Retailer continues to facilitate the Promoter's marketing and promotion of, and the participation of Customers in, the Bonus Cash Program after the period specified in item 3 of the Schedule without either the Promoter or the Retailer giving written notice of termination of this Agreement, then this Agreement will continue on a month-to-month basis (but otherwise on the same terms) until either the Promoter or the Retailer gives to the other not less than 1 month's written notice of termination of this Agreement.

3. Retailer's obligations

3.1 Customer payment obligations

The Retailer must:

- (a) when a Customer wishes to purchase goods or services from the Retailer, not refuse to accept the Bonus Cash Card as a means of that Customer paying for those goods or services;
- (b) not charge any Customer any additional fees for using the Bonus Cash Card; and
- (c) notify the Promoter in writing at least 5 business days before any change occurs to the Retailer's VISA Merchant ID, Terminal ID and/or Merchant Bank (which as at the date of this Agreement, are specified in items 9 and 11 of the Schedule).

3.2 General obligations

- (a) The Retailer must:
 - (i) display, in a prominent location at the entry of all Retail Outlets and at checkouts within the Retail Outlets, any brochures, application forms, signage and other marketing or promotional materials provided to the Retailer by the Promoter in relation to the Bonus Cash Program;
 - (ii) provide written notification to the Promoter whenever there is a shortage of marketing or promotional materials relating to the Bonus Cash Program in any of the Retail Outlets;
 - (iii) promptly direct all enquiries relating to the Bonus Cash Program and/or applications for Bonus Cash Cards to representatives of the Promoter (and not accept any applications for Bonus Cash Cards directly);
 - (iv) ensure that its business is at all times conducted in a manner that does not result in a breach of the warranty in clause 3.5; and
 - (v) comply with all reasonable directions given to it by the Promoter in relation to the Bonus Cash Program and/or the Bonus Cash Cards.
- (b) The Retailer must not:

- (i) carry out any marketing or promotional activity (including publishing, distributing or circulating any marketing or promotional material) in relation to the Bonus Cash Program and/or Bonus Cash Cards, without the Promoter's prior written approval or unless permitted or required by this Agreement; or
- (ii) make any statement or provide any advice in relation to the Bonus Cash Program where such statement or advice would constitute "financial product advice" for the purposes of Part 7.1 of the Corporations Act.

3.3 Staff members

The Retailer must ensure that its officers, employees, consultants, agents, contractors and related entities comply with this clause 3 as if each of those persons were bound by this Agreement as a "Retailer".

3.4 Conflict of interest

- (a) The Retailer must ensure that, in facilitating the Promoter's marketing and promotion of, and participation by Customers in, the Bonus Cash Program, no conflict arises between the interests of the Promoter and the interests of the Retailer, and the Retailer must make full and complete disclosure to the Promoter of the existence, nature and extent of any such conflict or potential conflict of interest.
- (b) The Promoter will assess the real or potential conflict in any individual case and may direct the Retailer to take such action as it considers necessary to remedy the real or potential conflict, and the Retailer must promptly comply with that direction.

3.5 Warranty

The Retailer warrants and represents that the description of its business set out in items 5 and 6 of the Schedule is true, accurate and not misleading.

4. The Promoter's obligations

4.1 Provision of services

The Promoter agrees to provide the services outlined in clauses 4.2, 4.3 and 4.4 on the condition that the Retailer must not, and must cause its related bodies corporate not to, acquire goods or services (or re-supply goods or services) that relate to a loyalty or reward program that is the same as or similar to the Bonus Cash Program, directly or indirectly from a competitor of the Promoter (or a competitor of a related body corporate of the Promoter).

4.2 Marketing and promotional obligations

The Promoter must:

- (a) within a reasonable time after the Commencement Date, distribute an electronic marketing message to the then holders of Bonus Cash Cards relating to the business of the Retailer and the Bonus Cash Program, with that message being in a form that is:
 - (i) no more than 50 words; and
 - (ii) otherwise in a form reasonably approved by the Promoter;
- (b) include details of the Retailer in all marketing and promotional material that lists retailers that are facilitating the participation of customers in the Bonus Cash Program; and
- (c) send an electronic message to the then holders of Bonus Cash Cards (in a form reasonably approved by the Retailer) within 5 business days after the Promoter receives a notice from the Retailer under clause 7 relating to a variation of the Bonus Cash Amount by the Retailer.

4.3 Retailer branded Bonus Cash Cards

The parties acknowledge and agree that Customers applying for Bonus Cash Cards will not be given the option to receive a Bonus Cash Card with a design and layout that incorporates any of the Retailer Trade Identification, unless otherwise agreed in writing between the Promoter and the Retailer.

4.4 Management and promotion of the Bonus Cash Program

- (a) The parties acknowledge and agree that the Promoter, the Issuing Bank, the Transaction Processor and any other person or persons notified to the Retailer by the Promoter as being involved in the promotion or operation of the Bonus Cash Program (other than the Retailer), will conduct all activities relating to:
- (i) receiving and assessing applications for the issuance of all Bonus Cash Cards;
 - (ii) providing applicants for Bonus Cash Cards with a product disclosure statement in accordance with the Corporations Act;
 - (iii) arranging and managing the issuance of Bonus Cash Cards, including the physical delivery and activation of Bonus Cash Cards;
 - (iv) tracking the available balance and transaction history of each Bonus Cash Card;
 - (v) providing a website for the holders of Bonus Cash Cards to view the available balance and transaction history relating to their respective Bonus Cash Cards and processing deposits and withdrawals made by the holders of Bonus Cash Cards;
 - (vi) managing the resolution of any problems or issues that may arise in relation to the use of Bonus Cash Cards; and
 - (vii) any other activities associated with the Bonus Cash Program and/or Bonus Cash Cards,
- with the apportionment of responsibility for those activities between the Promoter, the Issuing Bank, the Transaction Processor and other relevant persons being as reasonably determined by the Promoter from time to time.
- (b) The Retailer must not (and must ensure that its employees, agents and contractors do not) engage in any of the activities contemplated by this clause 4.4, unless approved in writing by the Promoter or permitted or required by this Agreement.

5. Advertising and intellectual property

5.1 Use of Bonus Cash Trade Identification

- (a) Subject to clauses 3.2(b) and 5.1(b), the Promoter grants to the Retailer, or must procure that the Retailer is granted, a non-exclusive licence to use the Bonus Cash Trade Identification in relation to any activities carried out by the Retailer in accordance with clause 3.2.
- (b) The Retailer may only use the Bonus Cash Trade Identification in accordance with the reasonable written directions (including directions relating to reproducing the Bonus Cash Trade Identification) of the Promoter.

5.2 Use of the Retailer Trade Identification

- (a) Subject to clause 5.2(c), the Retailer grants to the Promoter, the Issuing Bank, the Transaction Processor and any other persons notified to the Retailer by the Promoter that is involved in the marketing, promotion or operation of the Bonus Cash Program, a non-exclusive licence to use the Retailer Trade Identification in relation to any marketing, promotion or other activities carried out by the Promoter or those other persons in connection with the Bonus Cash Program.
- (b) The Retailer represents and warrants to the Promoter, the Issuing Bank, the Transaction Processor and any other persons notified to the Retailer by the Promoter under clause 5.2(a) that the owner of the Retailer Trade Identification is the person or persons set out in item 4 of the Schedule and that the use of the Retailer Trade Identification in the manner contemplated by this Agreement will not infringe the Intellectual Property Rights (or any other rights) of any Third Party.
- (c) If the owner of the Retailer Trade Identification set out in item 4 of the Schedule is not the Retailer, then before the Commencement Date, the Retailer must provide written evidence (in a form satisfactory to the Promoter) that the Retailer has the power and authority to grant the licence under clause 5.2(a).

5.3 Ownership of Intellectual Property Rights

The parties acknowledge and agree that nothing in this Agreement causes any transfer of the ownership of any Intellectual Property Rights associated with the Bonus Cash Trade Identification or the Retailer Trade Identification.

6. Fees and payments

6.1 Bonus Cash Amount

Whenever goods and/or services are purchased by a Customer from the Retailer using a Bonus Cash Card, the Retailer acknowledges and agrees that the Promoter or the Transaction Processor will withdraw the Bonus Cash Amount (current at the time that the relevant purchase was made) relating to that purchase from the relevant Retailer Account for the purpose of depositing the Bonus Cash Amount into the Customer Account associated with that Bonus Cash Card.

6.2 Marketing and Admin Fee

Whenever goods and/or services are purchased from the Retailer using a Bonus Cash Card, the Retailer acknowledges and agrees that the Promoter or the Transaction Processor will withdraw the Marketing and Admin Fee relating to that purchase from the relevant Retailer Account, and that this amount will be retained by the Promoter and other participants in the Bonus Cash Program as consideration for the marketing and promotional activities contemplated by clause 4.

6.3 Access to the Retailer Accounts

The Retailer must do everything reasonably required by the Promoter to ensure that the Promoter and the Transaction Processor are able to access each Retailer Account to withdraw the amounts contemplated by clauses 6.1 and 6.2, including:

- (a) providing the Promoter with a properly completed and signed copy of the Direct Debit Authorisation before the Commencement Date; and
- (b) completing and signing any other forms reasonably required by the Promoter.

6.4 Funds in the Retailer Accounts

The Retailer must ensure that, at all times, each Retailer Account is kept open and operational and that the balance of funds held in each Retailer Account is sufficient for the Promoter or the Transaction Processor to make the withdrawals contemplated by clauses 6.1 and 6.2 (which in most instances, will be made within 24 hours after the relevant transaction using the Bonus Cash Card has occurred).

6.5 Monthly reporting

The Promoter will provide the Retailer with a statement (at least once each month) reporting on the transactions that have been processed by the Promoter and/or the Transaction Processor in accordance with this clause 6 during the preceding month (including a summary of the Bonus Cash Amount withdrawals and Marketing and Admin Fee withdrawals made during the preceding month).

6.6 Default in payment

Subject to clause 6.8, if the Retailer defaults in any of its obligations under this clause 6 and this results in the Promoter or the Transaction Processor being unable to withdraw any amount required under this clause 6, then the Retailer must immediately pay that amount (plus an additional \$40 for each separate default that occurs) to the Promoter (or as directed by the Promoter) and the Promoter may do one or both of the following:

- (a) suspend performance of any or all of its obligations under this Agreement until the amount outstanding is paid in full; and
- (b) charge interest on the amount outstanding at the Prescribed Rate, calculated from and including the date on which the relevant default occurred until but excluding the date on which the payment is made, which interest is payable to the Promoter on demand.

6.7 Genuine estimate of loss

The parties acknowledge and agree that the amount of fees and interest payable by the Retailer under clause 6.6 reflects a genuine pre-estimate of the loss and damage that the Promoter and other persons

operating the Bonus Cash Program will suffer as a result of the Retailer defaulting under any of its obligations under this clause 6.

6.8 Other rights and obligations not affected

The exercise by the Promoter of any of its rights under clause 6.6 does not affect:

- (a) the Retailer's obligations; or
- (b) any other rights or remedies the Promoter or the Transaction Processor may have in relation to any failure by the Retailer to pay an amount due,

under this Agreement, any other agreement between or involving the Promoter and the Retailer, and applicable law.

7. Variations of Bonus Cash Amount

- (a) The Retailer may by written notice given to the Promoter after the Commencement Date elect to vary the amount of the Bonus Cash Amount in relation to some or all of the goods and/or services supplied by the Retailer.
- (b) Any variation of the Bonus Cash Amount under clause 7(a) does not take effect until the Promoter sends the electronic message contemplated by clause 4.2(c).

8. Variations of Marketing and Admin Fee

The Marketing and Admin Fee may only be varied by written agreement between the Promoter and the Retailer.

9. Confidentiality

9.1 Obligations of confidentiality

Subject to clauses 9.2 and 9.3, the Receiving Party must:

- (a) keep the Confidential Information confidential and not directly or indirectly disclose, divulge or communicate any Confidential Information to, or otherwise place any Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;
- (b) take all reasonable steps to secure and keep secure all Confidential Information coming into its possession or control;
- (c) not memorise, use, modify, reverse engineer or make copies, notes or records of the Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under this Agreement; and
- (d) take all reasonable steps to ensure that any person to whom the Receiving Party is permitted to disclose Confidential Information under clause 9.3 complies at all times with the terms of this clause 9 as if that person were a Receiving Party.

9.2 Disclosure required by law

The obligations of confidentiality under clause 9.1 do not apply to any disclosure of Confidential Information by the Receiving Party that is necessary to comply with any court order, law or applicable rules of any financial market if, to the extent practicable and as soon as reasonably possible, the Receiving Party:

- (a) notifies the Disclosing Party of the proposed disclosure;
- (b) consults with the Disclosing Party as to its content; and
- (c) uses reasonable endeavours to comply with any reasonable request by the Disclosing Party concerning the proposed disclosure.

9.3 Authorised disclosure

A Receiving Party may disclose Confidential Information to any related entity, employee, agent, contractor, officer, professional adviser, banker, auditor or other consultant of the Receiving Party (each a **Recipient**) only if the disclosure is made to the Recipient strictly on a "need to know basis" and, before the disclosure:

- (a) the Receiving Party notifies the Recipient of the confidential nature of the Confidential Information to be disclosed;
- (b) the Recipient undertakes to the Receiving Party (for the benefit of the Disclosing Party) to be bound by the obligations in this clause 9 as if the Recipient were a Receiving Party in relation

to the Confidential Information to be disclosed to the Recipient; and

- (c) if requested to do so by the Disclosing Party, the Recipient signs an undertaking or deed in a form acceptable to the Disclosing Party (and for the benefit of the Disclosing Party) agreeing to be bound by the obligations in this clause 9 as if it were a Receiving Party in relation to the Confidential Information to be disclosed to the Recipient.

9.4 Return or destruction of Confidential Information

Immediately on the written request of the Disclosing Party or on the expiry or termination of this Agreement for any reason, a Receiving Party must:

- (a) cease the use of all Confidential Information of or relating to the Disclosing Party (or any related entity of the Disclosing Party);
- (b) deliver to the Disclosing Party all documents and other materials in its possession or control containing, recording or constituting that Confidential Information or, at the option of the Disclosing Party, destroy, and certify to the Disclosing Party that it has destroyed, those documents and materials; and
- (c) for Confidential Information stored electronically, permanently delete that Confidential Information from all electronic media on which it is stored, so that it cannot be restored.

9.5 Liability for breach by Recipient

The Receiving Party is liable for any breach of this clause 9 by a Recipient as if the Recipient were a Receiving Party in relation to the Confidential Information disclosed to the Recipient.

10. Public announcements

10.1 Making announcements

A party must not make, or authorise or cause to be made, any public announcement relating to the negotiations between the parties or the subject matter of this Agreement unless:

- (a) it has the prior written consent of the other party; or
- (b) it is required to do so by law or by the rules of any financial market to which a party, or a related body corporate of a party, is subject.

10.2 Requirements

If a party is required to make a public announcement under clause 10.1(b), then it must, before doing so, to the extent practicable and as soon as reasonably possible:

- (a) notify the other party of the proposed announcement;
- (b) consult with the other party as to its content; and
- (c) use reasonable endeavours to comply with any reasonable request by the other party concerning the proposed announcement.

11. Warranties against defects

11.1 Guarantees that cannot be excluded by law

The services provided by the Promoter under this Agreement come with guarantees that cannot be excluded under the Australian Consumer Law. For a major failure of the services, the Retailer is entitled to compensation for any reasonably foreseeable loss or damage. The Retailer is also entitled to have the services supplied again or to be paid the cost of having the services applied again, if the services fail to be of acceptable quality and the failure does not amount to a major failure. These benefits are in addition to any other rights and remedies available to the Retailer at law in relation to the services.

11.2 Notification of claims

If the Retailer considers that it is entitled to make a claim in respect of any of the services provided by the Promoter under this Agreement, the Retailer must (at its cost):

- (a) notify the Promoter (by email or post) of the claim within 7 days after the Promoter provides the services that the Retailer claims to be defective; and

- (b) in that notice, provide the Promoter with specific details of the claim being made.

Subject to clauses 11.1 and 12, if the Promoter is satisfied that any of the services were defective, then the Promoter will (at the Promoter's option and as the Retailer's sole remedy) supply the services again or pay the Retailer the cost of supplying the services again.

11.3 Application of this clause

This clause 11 only applies to the extent that the Retailer is a "consumer" for the purposes of the Australian Consumer Law.

12. Liability

12.1 Limitations on liability

Subject to clause 11 and this clause 12, and to the maximum extent permitted by law, the Promoter is not liable to the Retailer or to any other person for:

- (a) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of the Retailer or any of its employees, agents or contractors; or
- (b) any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time, irrespective of whether:
 - (i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or
 - (ii) the Promoter or any other person was previously notified of the possibility of the loss or damage.

12.2 Exclusion of implied warranties

Any warranty, guarantee, condition, representation, undertaking or other right that would be implied in this Agreement (or otherwise imposed) by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

12.3 Non-excludable rights implied by statute

Notwithstanding the other provisions in this clause 12 and anything else in this Agreement, the Promoter does not exclude, restrict or modify any warranty, guarantee, condition, representation, undertaking or other right under any statute (including the *Competition and Consumer Act 2010* (Cth)) where to do so would contravene that statute or cause any part of this Agreement to be void (**Non-excludable Condition**).

12.4 Maximum liability

Subject to clause 11 and this clause 12, the maximum aggregate liability of the Promoter for all proven losses, damages and claims arising out of this Agreement, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the Marketing and Admin Fee payments paid by the Retailer under this Agreement in the first 12 months after the Commencement Date.

12.5 Liability for breach of non-excludable rights

Subject to clause 11 and to the maximum extent permitted by law, the liability of the Promoter for a breach of a Non-excludable Condition is limited, at the Promoter's option, to:

- (a) in the case of goods, any one or more of the following:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; or
- (b) in the case of services:
 - (i) the supplying of the services again; or

- (ii) the payment of the cost of having the services supplied again.

13. Default and termination

13.1 Default notice

If an Event of Default occurs in relation to the Promoter or the Retailer (**Relevant Party**), the other of them may give a written notice (**Default Notice**) to the Relevant Party specifying the Event of Default and requiring the Relevant Party to remedy the default within 10 business days after the Default Notice is given to the Relevant Party.

13.2 Termination notice

If the Promoter or the Retailer (**Defaulting Party**):

- (a) receives a Default Notice and does not comply with the notice within the relevant period referred to in clause 13.1;
- (b) receives a Default Notice on 3 occasions in any period of 12 months;
- (c) is the subject of an Insolvency Event; or
- (d) in relation to the Retailer, is the subject of a Change of Control that has not been consented to by the Promoter,

then that of the Promoter or the Retailer which is not the Defaulting Party, may, without limiting its other rights and remedies, terminate this Agreement by giving to the Defaulting Party written notice with immediate effect.

13.3 Immediate termination

Without limiting its other rights and remedies, the Promoter may by giving notice to the Retailer terminate this Agreement with immediate effect in circumstances where the Retailer has breached any of the Retailer's obligations in clause 3.2(b).

13.4 Termination without cause

Either party may at any time by giving not less than 3 months' written notice to the other party terminate this Agreement for any reason.

13.5 Additional grounds for termination

Nothing in this clause 13 restricts any rights of termination that a party may otherwise have under clause 2.2.

14. Consequences of termination

14.1 Consequences generally

Subject to clause 14.2, on the expiry or termination of this Agreement, this Agreement is at an end as to its future operation except for the enforcement of any right or claim that arises on, or has arisen before, the termination.

14.2 Clauses surviving termination

Despite any other provision of this Agreement, on the expiry or termination of this Agreement the Retailer must:

- (a) within 5 business days pay the Promoter all amounts owing by the Retailer to the Promoter or the Transaction Processor, whether due at that time or not;
- (b) immediately cease using all the Bonus Cash Trade Identification;
- (c) no longer refer to any aspect of the Bonus Cash Program; and
- (d) immediately comply with its obligations under clause 9.4 in relation to Confidential Information of or relating to the Promoter,

and in all other respects this clause 14 and clauses 5.3, 6.3, 6.4, 6.6, 6.7, 6.8, 9, 10, 12, 15, 16 and 17 survive the expiry or termination of this Agreement.

15. Conflicting provisions

The following parts of the Agreement must be read in the following (descending) order of precedence:

- (a) the Schedule (including any special conditions set out in item 12 of the Schedule);

- (b) the clauses of the main body of this Agreement, being these General Conditions;
- (c) the Direct Debit Authorisation; and
- (d) any other annexure to the Signing Forms.

Where a conflict occurs between the provisions contained in 2 or more parts of the Agreement referred to in clauses 15(a), 15(b), 15(c) and 15(d), the part of the Agreement lower in the order of precedence will, where possible, be read down to the extent necessary to resolve that conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions will be severed from the part of the Agreement lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that part of the Agreement.

16. GST

16.1 Definitions

In this clause 16:

- (a) the expressions **Consideration**, **GST**, **Input Tax Credit**, **Recipient**, **Supply**, **Tax Invoice** and **Taxable Supply** have the meanings given to those expressions in the GST Act;
- (b) **Supplier** means any party treated by the GST Act as making a Supply under this Agreement.

16.2 Consideration is GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in connection with this Agreement are exclusive of GST.

16.3 Payment of GST

- (a) If GST is imposed on any Supply made under or in connection with this Agreement, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Agreement.

16.4 Reimbursement of expenses

If this Agreement requires a party (the **First Party**) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (the **Other Party**), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

- (a) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (**Net Amount**); and
- (b) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

17. Definitions and general provisions

17.1 Definitions

In this Agreement, unless the context requires otherwise:

Agreement means the agreement between the Promoter and the Retailer, comprising the Signing Forms and these General Conditions;

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Bonus Cash Amount means the amount specified in item 7 of the Schedule (as varied from time to time in accordance with clause 7);

Bonus Cash Card means any valid Visa Debit card issued, or to be issued, by the Issuing Bank for use in conjunction with the Bonus Cash Program;

Bonus Cash Program means the loyalty program operated (or to be operated) by (among others) the Promoter involving the payment or crediting of cash to the holder of a Bonus Cash Card when that Bonus Cash Card is used to purchase goods and/or services from retailers

facilitating participation in the loyalty program (whether that loyalty program is referred to as "Bonus Cash", "Rider+", "Lucky Buys", "GoShopNow" or any other name notified by the Promoter to the Retailer from time to time);

Bonus Cash Trade Identification means the trade marks, service marks, symbols, branding, logos and other trade indicia (whether registered or not) used to identify or otherwise in connection with the Bonus Cash Program and contained in any of the marketing or promotional materials provided to the Retailer by the Promoter (excluding any such trade marks, service marks, symbols, branding, logos and other trade indicia that are not owned or licensed for use by the Promoter), together with any other trade marks, service marks, symbols, branding, logos and other trade indicia notified by the Promoter to the Retailer from time to time;

Change of Control means, in relation to a body corporate, the occurrence of an event or circumstance where a person who is not presently able to do any of the following things becomes able to do one of the following things (whether directly or indirectly or through one or more intervening persons, companies or trusts):

- (a) control the composition of more than one half of the body's board of directors;
- (b) be in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the members of the body; or
- (c) hold or have a beneficial interest in more than one half of the issued share capital of the body;

Commencement Date means the date specified in item 2 of the Schedule;

Confidential Information means:

- (a) the terms of this Agreement and its subject matter, including Information submitted or disclosed by a party during negotiations, discussions and meetings relating to this Agreement;
- (b) Information that at the time of disclosure by a Disclosing Party is identified to the Receiving Party as being confidential; and
- (c) all other Information belonging or relating to a Disclosing Party (or any related body corporate of that Disclosing Party), other than Information that:
 - (i) is disclosed to the Receiving Party by a Third Party entitled to do so, whether before or after the date of this Agreement;
 - (ii) was already lawfully in the Receiving Party's possession when it was given to the Receiving Party and was not otherwise acquired from the Disclosing Party directly or indirectly; or
 - (iii) is generally available to the public at the date of this Agreement or subsequently becomes so available, in each case other than by reason of a breach of this Agreement or any breach of confidence;

Controller means, in relation to a person:

- (a) a receiver, receiver and manager, administrator or liquidator (whether provisional or otherwise) of that person or that person's property; or
- (b) anyone else who (whether or not as agent for the person) is in possession, or has control, of that person's property to enforce and Encumbrance;

Customer means any actual or potential customer of the Retailer;

Customer Account in relation to a Customer, means the account with the Issuing Bank designated to hold the funds of that Customer for use in connection with a Bonus Cash Card;

Direct Debit Authorisation means the "Direct Debit Request (DDR)" form included as part of the Signing Forms;

Disclosing Party means the party to whom Information belongs or relates;

Encumbrance means:

- (a) any legal or equitable interest or power reserved in or over an interest in an asset, including any retention of title;

- (b) an interest or power created or arising in or over an interest in an asset under a bill of sale, mortgage, charge, lien, pledge, hypothecation, preferential right, trust or other similar instrument, device or power; or
- (c) any other adverse right, title or interest of any nature, by way of security for the payment of a debt or the performance of any other obligation,

and includes any agreement or arrangement (whether legally binding or not) to grant or create any of the above;

Event of Default means, in relation to a party, the occurrence of any one or more of the following events or circumstances:

- (a) the party fails to comply with any of its obligations under this Agreement;
- (b) a notice of deregistration of the party is given under sections 601AA(5) or 601AB(5) of the Corporations Act;
- (c) the party becomes unable to perform all of its obligations and take all actions contemplated under this Agreement; and
- (d) the party ceases or threatens to cease to carry on business or a substantial part of it;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

Insolvency Event means, in relation to a party, any one or more of the following events or circumstances:

- (a) being in liquidation or provisional liquidation or under administration;
- (b) having a Controller or analogous person appointed to it or any of its property;
- (c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) being unable to pay its debts or being otherwise insolvent;
- (e) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
- (f) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; and
- (g) any analogous event or circumstance under the laws of any jurisdiction;

Information means any information, whether oral, graphic, electronic, written or in any other form, including:

- (a) forms, memoranda, letters, specifications, processes, procedures, statements, formulae, technology, inventions, trade secrets, research and development information, know how, designs, plans, photographs, microfiche, business records, notes, accounting procedures or financial information, sales and marketing information, names and details of customers, suppliers and agents, employee details, reports, drawings and data;
- (b) copies and extracts made of or from that information and data, whether translated from the original form, recompiled, partially copied, modified, updated or otherwise altered; and
- (c) samples or specimens (if any) disclosed either before or after execution of the Signing Forms;

Intellectual Property Rights means all present and future intellectual and industrial property rights conferred by law and whether existing now or in the future, including:

- (a) trade marks, service marks, symbols, branding, logos and other trade indicia (whether registered or not), patents, designs, copyright, rights in circuit layouts, plant breeder's rights, know how, domain names, inventions, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply from registration of any of those rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (d) all renewals and extensions of those rights;

Issuing Bank means any authorised deposit taking institution notified to the Retailer by the Promoter after the date of this Agreement as being the issuer of the Bonus Cash Cards;

Marketing and Admin Fee means the amount specified in item 8 of the Schedule (unless otherwise agreed or varied under clause 8) and payable in accordance with clause 6.2;

Prescribed Rate means the rate that is 2% per annum above the rate specified from time to time under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*;

Promoter means The Loyalty Group Pty Ltd CAN: 074 986 646;

Receiving Party means the party to whom Information is disclosed or who possesses or otherwise acquires Information belonging or relating to a Disclosing Party;

Retailer means the party referred to as the "Retailer" in the Signing Forms;

Retailer Account in relation to a Retail Outlet, means the bank account of the Retailer applicable to that Retail Outlet as specified in item 10 of the Schedule;

Retail Outlets means each of the locations referred to in item 9 of the Schedule;

Retailer Trade Identification means the Retailer's name and any trade marks, service marks, symbols, branding, logos and other trade indicia (whether registered or not) specified in item 4 of the Schedule, together with any other trade marks, service marks, symbols, branding, logos and other trade indicia notified by the Retailer to the Promoter from time to time;

Schedule means the "Schedule" contained within the Signing Forms;

Signing Forms means the documents agreed between the Promoter and the Retailer, including sections entitled "Parties and contact details", "Background", "Signing", "Schedule", "Direct Debit Request (DDR)" and which acknowledge the Promoter's and the Retailer's agreement to comply with the terms of these General Conditions;

Third Party means a person who is not a party to this Agreement; and

Transaction Processor means any person notified to the Retailer by the Promoter after the date of this Agreement that may be authorised to (among other things) withdraw the Bonus Cash Amount and the Marketing and Admin Fee from the Retailer Accounts on behalf of (or at the direction of) the Promoter for the purposes of this Agreement.

17.2 Rules of interpretation

In this Agreement, headings are for convenience only and must be ignored in interpreting this Agreement, and unless the context requires otherwise:

- (a) a reference to a "clause" is a reference to a clause in these General Conditions;
- (b) money amounts are taken to be in Australian currency;
- (c) the word "business day" means a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia;
- (d) the words "include", "for example" or any form of those words must be construed as if they were followed by "but without limitation";
- (e) the singular includes the plural and vice versa;
- (f) the words "in writing" mean any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (g) other grammatical forms of a defined word or phrase have a corresponding meaning;
- (h) the words "financial market", "related body corporate", "related entity" and "subsidiary" have the meaning given to them in the Corporations Act;
- (i) a reference to the "Corporations Act" is a reference to the *Corporations Act 2001 (Cth)*;
- (j) an obligation, covenant, warranty or representation given or entered into by more than one person binds them jointly and severally;
- (k) the word "party" means a party to this Agreement;
- (l) the word "person" (including a party) includes:

- (i) a natural person, company, other body corporate, partnership, firm, joint venture, trust, association, government agency and any other body or entity whether incorporated or not; and
 - (ii) that person's successors, permitted assigns, substitutes, executors and administrators; and
- (m) the word "law" includes:
- (i) any statute, regulation, rule, by-law, ordinance, proclamation, judgment, treaty, decree, convention, rule or principle of common law or equity, rule of any applicable stock exchange, or requirement or approval (including conditions) of a government agency;
 - (ii) any regulation, rule, by-law, ordinance, proclamation or judgment made under that law; and
 - (iii) that law as amended, consolidated, supplemented, re-enacted or replaced,

and whether applicable in or outside Australia.

17.3 Governing law and jurisdiction

- (a) This Agreement is governed by and must be construed in accordance with the law of Victoria, Australia.
- (b) The parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

17.4 Entire understanding

This Agreement, together with any documents referred to in this Agreement or executed under or in connection with this Agreement, contain the entire understanding and agreement of the parties about the subject matter of this Agreement and supersede, terminate and replace all prior representations, negotiations, agreements, arrangements, understandings and other communications between or involving some or all of the parties.

17.5 Costs

Each party must pay its own costs of and incidental to the preparation, negotiation and completion of this Agreement and all documents contemplated by this Agreement.

17.6 Duty

Any duty (including related interest or penalties) payable in respect of this Agreement or any instrument created in connection with it must be paid when due by the Retailer.

17.7 Waiver and exercise of rights

- (a) A waiver by a party of a provision, right, breach or default under or in connection with this Agreement is binding on that party only if it is given in writing and signed by or on behalf of that party.
- (b) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (c) A failure or delay by a party in exercising any right or remedy under or in connection with this Agreement does not in any circumstances operate as a waiver of that right or remedy, nor does a single or partial exercise of any such right or remedy preclude any other or further exercise of that or any other right or remedy.

17.8 Rights cumulative

The rights, remedies and powers of the parties under this Agreement are cumulative and not exclusive of any rights, remedies or powers available to any of the parties by law.

17.9 Non merger

A term or condition of, or act done in connection with, this Agreement does not operate as a merger of any of the rights or remedies of the parties under or in connection with this Agreement and those rights and remedies continue unchanged.

17.10 Invalid or unenforceable provisions

Any provision of this Agreement which is invalid or unenforceable in any jurisdiction must:

- (a) to the extent it is capable of being read down in that jurisdiction, be read down in that jurisdiction to the minimum extent necessary to achieve validity or enforceability in that jurisdiction; and
- (b) to the extent it is not capable of being read down in that jurisdiction, be severed from this Agreement in that jurisdiction,

without invalidating or affecting the remaining provisions of this Agreement or the validity or enforceability of that provision in any other jurisdiction.

17.11 Assignment

- (a) Subject to clause 17.11(b), a party must not transfer, assign, create an interest in or deal in any other way with any of its rights and benefits under this Agreement without the prior written consent of the other party.
- (b) The Promoter may assign any or all of its rights and benefits under this Agreement without the consent of the Retailer by giving written notice to the Retailer.

17.12 Third party rights

To the extent that any right, representation or warranty under this Agreement is expressed to be for the benefit of a Third Party, the Promoter enters into this Agreement in its own capacity and in its capacity as trustee and agent for that Third Party, and the Promoter is entitled to enforce that right, representation or warranty for the benefit of itself and for the benefit of that Third Party.

17.13 No variation

Except to the extent this Agreement provides otherwise, this Agreement cannot be amended or varied except in writing signed by the parties.

17.14 Consents and approvals

Except to the extent this Agreement provides otherwise, any consent or approval required of a party may be withheld or given conditionally or unconditionally, in each case in the absolute discretion of that party.

17.15 Counterparts

The Signing Forms may be signed in counterparts and all counterparts taken together constitute one document.

17.16 No right of set-off

Except to the extent this Agreement provides otherwise, a party has no right of set-off against a payment due to another party.

17.17 Relationship of parties

Except to the extent this Agreement provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

17.18 Further assurances

Each party, at its own expense (unless otherwise provided in this Agreement) and within the time and in the manner reasonably requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Agreement.