

# Terms and Conditions

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## Buy Now Pay Later

Company: Franchise Payment Services Pty Ltd  
ABN: 66 654 054 823  
Date Issued: March 2024

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## 1. INTRODUCTION

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- 1.1 These Terms and Conditions are part of the Agreement between Franchise Payment Services Pty Ltd (ABN: 66 654 054 823) (“**Franchise Payment Services, we, us or our**”) and you as the client (“**you, your, yourself**”). It governs our dealings with you in relation to your PayPlan and contains information we are required by law to give you. You should keep them for future reference. If you are paying in full and therefore not using a PayPlan these terms and conditions do not apply, with the exception of clause 4.6.
- 1.2 The Agreement is constituted by the following documents:
- (a) these Terms and Conditions which include:
    - (i) our Fee Schedule in clause 5;
    - (ii) notice of disclosure of your credit information to a credit reporting agency in clause 20; and
  - (b) the PayPlan Form you complete, including the Payment Schedule contained under your PayPlan Form.
- 1.3 You acknowledge and agree that:
- (a) you have read, understood and agree to all documentation provided to you by us including these Terms and Conditions;
  - (b) the Transactions and the performance by us of our obligations under the Agreement are subject to the Applicable Laws;
  - (c) all information you have provided to us is accurate and not misleading and that you are aware that we are relying on it. This includes the identification information provided by you to us to process your PayPlan Form;
  - (d) you enter into this Agreement in your personal capacity and not in any other capacity;
  - (e) you do not enter this Agreement on behalf of any third-party; and
  - (f) we do not provide any legal, tax, financial or accounting advice to you as part of the services that we provide to you in accordance with these Terms and Conditions. We encourage you to obtain independent advice from your financial advisor, auditor and/or legal counsel.
- 1.4 When you accept the Agreement via your PayPlan Form, you will be bound by the Agreement in your dealings with us. Transactions we enter into under the Agreement are legally binding and enforceable. These Terms and Conditions will come into effect on the earlier of:
- (a) the date this version is issued; and
  - (b) when your PayPlan Form has been submitted.

## **2. ELIGIBILITY**

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- 2.1 To be eligible to use our services you must:
- (a) be an individual who is at least 25 years old;
  - (b) be capable of entering into a legally binding contract in your personal capacity;
  - (c) have a valid and verifiable email address and Australian mobile telephone number;
  - (d) serviced property must be owned by the applicant;
  - (e) provide a valid residential address in Australia;
  - (f) be living in Australia;
  - (g) use your real name and true personal details and not use an alias or false identity (even with the consent of the person whose identity you are using) or provide false, inaccurate or misleading personal details; and
  - (h) have a valid Nominated Card.
- 2.2 By entering into this Agreement, you represent and warrant that you are eligible to use our services. We reserve the right to reject your PayPlan Form for any reason.

## **3. DEALINGS WITH US**

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- 3.1 Our Terms and Conditions will be made available to you upon completing the PayPlan Form. You can also access our Terms and Conditions via our Website at [www.franchisepaymentservices.com/terms](http://www.franchisepaymentservices.com/terms).
- 3.2 You will be required to enter into a PayPlan Form for each service provided by Franchisee and provide us with the Invoice number and Total Payment Amount when accepting the Agreement. This confirms that the services have been provided by the Franchisee.
- 3.3 Within each PayPlan Form, you will be required to enter your chosen Nominated Card. Once you have entered your chosen Nominated Card, accepted the Terms and Conditions and your PayPlan Form has been submitted and approved, the First Instalment Payment will be immediately charged to your Nominated Card.
- 3.4 Approval of the PayPlan Form may not be instantaneous. Our system will also flag multiple PayPlans entered into by you.
- 3.5 Upon successful completion of your First Instalment Payment, we will:
- (a) send you:
    - (i) an email confirmation,
    - (ii) a copy of this Agreement; and
    - (iii) a Client Number to identify your PayPlan.
  - (b) pay the full Amount Due to Franchisee.
- 3.6 It is your responsibility to check the email carefully as soon as you receive it and immediately

notify us of any errors or unauthorised charges on your Nominated Card.

3.7 You agree that the services described in the Invoice have been provided or are soon to be provided and any Invoice(s) has not been disputed or challenged. You agree that Franchisee fees disclosed in any Invoice(s) represents a proper and reasonable charge for the services rendered.

### 3.8 **Financial Product Advice**

- (a) Any information or advice that we give you is generic in nature and does not take into account your financial situation, needs or personal objectives. In particular, you acknowledge that we do not provide personal advice or give you advice about whether you should utilise our services. You must consider the appropriateness of our services having regard to your own financial situation, needs or personal objectives and obtain your own independent financial advice.
- (b) We have not completed an assessment of your financial situation, needs or personal objectives pursuant to the responsible lending requirements of the *National Consumer Credit Protection Act 2009* (Cth). We have not considered whether entering into this Agreement is suitable or not unsuitable for you. We do not provide credit assistance and therefore, are not bound by the responsible lending provisions.

### 3.9 **Anti-Money Laundering Legislation and Know Your Customer**

- (a) You acknowledge and agree that we may require information from you from time to time to comply with the AML/CTF Laws. You undertake to provide us with all information and assistance that we may require to comply with the AML/CTF Laws.
- (b) You must consent to us undertaking online Know Your Customer and verification processes to obtain and/or verify the information provided about you.
- (c) We may pass on information collected from you and relating to dealings under this Agreement as required by the AML/CTF Laws or other Applicable Laws and regulations and are under no obligation to inform you we have done so. We may undertake all such anti-money laundering and other checks in relation to you (including restricted lists, blocked persons and countries lists) as deemed necessary or appropriate by us, and we reserve the right to take any action with regard thereto with no liability whatsoever therefore.
- (d) You also warrant that:
  - (i) You are not aware and have no reason to suspect that the moneys used to fund your dealings under this Agreement have been or will be derived from or related to any money laundering, terrorism financing or other illegal activities, whether prohibited under Applicable Laws, international law or convention or by agreement; and
  - (ii) You are not a politically exposed person as the term is used in the AML/CTF Laws.

## 4. PAYMENTS

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- 4.1 Payments must be made by a Nominated Card.
- 4.2 All Payments will be taken from your Nominated Card as specified under the PayPlan Form and you must pay all amounts due to be paid in accordance with the Payment Schedule provided to you as part of your PayPlan plus any other amounts set out in this Agreement.
- 4.3 All Payments and Transactions must be authorised by us and we reserve the right not to accept any PayPlan Form in our sole discretion. Circumstances where Payments and Transactions may not be authorised include, but are not limited to where:
- (a) there is suspicious or fraudulent conduct;
  - (b) we are required to or instructed by a regulator, enforcement officer or court of law;
  - (c) we become aware of a change in your financial circumstances that may affect your ability to make Payments under this Agreement;
  - (d) we reasonably suspect or become aware that you have breached or are likely to breach any of these Terms and Conditions; or
  - (e) there is, has been, or we become aware of a potential business disruption or technology issue which affects a Payment, or the services we provide under the Agreement.
- 4.4 **Automatic Payment**
- (a) You may receive an SMS message around two (2) days prior to when the Payment is due.
  - (b) Payments are charged directly to your Nominated Card on the date the Instalment is due as outlined in the Payment Schedule under your PayPlan. On occasion, Payments may be processed the next Business Day. You can update or change your Nominated Card at any time by contacting us.
  - (c) Subject to the other terms of the Agreement, you expressly consent to, authorise and instruct us to deduct Payment amounts from your Nominated Card in accordance with your PayPlan as outlined under the Payment Schedule. You acknowledge that you are giving us the ability to collect Payment amounts from or to your Nominated Card, in accordance with the PayPlan as outlined under the Payment Schedule and the terms of the Agreement. You must also check Payments have been successfully debited from your Nominated Card.
  - (d) You are responsible for ensuring that you have sufficient funds available in your Nominated Card to make instalment Payments on the dates as specified in your PayPlan as outlined under the Payment Schedule. You are liable for any fees or charges imposed by your Nominated Card (e.g. interest charges on a nominated credit card), except to the extent that such fees or charges arise as a result of our error or system failure. If any fees or charges are imposed as a result of our error or system failure, please provide us with a copy of the relevant records, and we will reimburse you for the relevant fees or charges.

- (e) If at any time you believe that a Payment made against your Nominated Card is inappropriate or incorrect, you must notify us immediately.
- (f) You must not cancel the Nominated Card provided to us during the term of your PayPlan. In circumstances where this may occur, you must immediately provide us with details of a new eligible credit or debit card. If the credit or debit card provided to us is due to expire prior to the conclusion of your PayPlan, you must provide us with details of a new eligible credit or debit card.
- (g) If an automatic payment fails (for example, if your Nominated Card is a credit or debit card which has expired), Late Fees may apply unless you otherwise make the scheduled Payment on or before the relevant due date. You authorise us to satisfy any amount you owe us by:
  - (i) debiting your Nominated Card at a later time or date;
  - (ii) debiting any other card which you have provided details of;
  - (iii) offsetting the Payment amount against any amounts we may owe to you; or
  - (iv) any other legal means.
- (h) Please see clause 5.3 below for more information regarding Late Fees.

#### **4.5 Australian Dollars**

- (a) All Payments made by you to us and by us to Franchisee or to you will be in Australian dollars unless otherwise agreed.

#### **4.6 If paying in full**

If you are paying in full and therefore not using a Payment Plan, you confirm the Franchise has performed the service you are paying for to your satisfaction and consent to us debiting the card entered above for the amount displayed including the credit card surcharge.

### **5. FEES AND CHARGES**

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#### **5.1 Card Processing Surcharge**

- (a) A Card Processing Surcharge of 1.5% per cent will be applied to the Total Payment Amount. The Card Processing Surcharge is calculated as a percent of Total Payment amount including fees and charges.

#### **5.2 Payment Dishonour Fees**

- (a) If you do not meet your scheduled Payments, as outlined under the Payment Schedule provided to you as part of your PayPlan, fees will apply on each Payment that is due but not received.
- (b) The following fees apply to late Payments:
  - (i) An initial Late Fee of \$10 will be charged to your Nominated Card if the direct debit attempt fails to clear on the scheduled payment date;

- (ii) A further \$10 fee will be charged to your Nominated Card if the Payment is due and is still unpaid after the second direct debit attempt; and
- (iii) A further \$10 fee will be charged to your Nominated Card if the Payment is due and is still unpaid after the third direct debit attempt.
- (c) Payment Dishonour Fees will be capped at \$200 per PayPlan.
- (d) If you are unable to make Payments in accordance with the Payment Schedule provided to you as part of your PayPlan, please contact us as soon as possible.

### 5.3 Government Fees and Charges

- (a) You must pay all Government duties, rates, taxes and charges now, or in the future, charged on or otherwise payable in relation to all your Payments. You must pay us the amounts in accordance with the relevant legislation, whether or not you are liable for them under that legislation.

## 6. AMENDMENT OF THIS AGREEMENT

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### 6.1 Amending these Terms and Conditions

- (a) We may amend, change, add, modify or replace these Terms and Conditions without your consent from time to time by giving fourteen (14) days written of changes which are material or to your detriment, including changes in relation to:
  - (i) Payments;
  - (ii) functionality of our services;
  - (iii) introduction of new services;
  - (iv) removal of existing services; or
  - (v) changes to our fees including an introduction of a new fee or an increase to an existing fee.
- (b) Where any amendments to the Terms and Conditions are made, we will make the most recently updated Terms and Conditions available on our Website. You can access our current version on: [www.franchisepaymentservices.com/terms-clients](http://www.franchisepaymentservices.com/terms-clients)
- (c) Where the variation is not material or to your detriment, we may notify you after we have made the change or not give you any notice.
- (d) If you object to any changes, you must notify us within fourteen (14) days of the date the notice is deemed to be received under clause 15. Any subsequent access, viewing or otherwise using our Website will constitute an acceptance of the variations and modifications. If you give us notice that you object, then the changes will not bind you, but we may require you to exit your Agreement with us as soon as reasonably practicable.



- (e) You understand that these Terms and Conditions cannot be modified by you via any verbal statements or written amendments without written acceptance or confirmation by us.
- (f) Despite any provisions of these Terms and Conditions, in providing our services we are entitled to take any action as we consider necessary in our absolute discretion to ensure the services provided under these Terms and Conditions are in compliance with all Applicable Laws.

## **7. TERMINATION OF THIS AGREEMENT**

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- 7.1 You may terminate your Agreement with us by giving us written notice. On termination of the Agreement you must pay all amounts owed to us, including any Outstanding Balance or applicable fees and charges.
- (a) your obligations under this Agreement will continue until you pay all amounts owed to us, including any Outstanding Balance or applicable fees and charges.
- 7.2 We may terminate your Agreement with us with immediate effect by notice in writing to you if:
- (a) you persistently default in the performance or observance of any obligation on its part arising under this Terms and Conditions;
  - (b) you assign these Terms and Conditions in breach of clause 16.2;
  - (c) there is fraudulent or suspicious conduct; or
  - (d) any of the representations or warranties given by you in these Terms and Conditions are, or become aware, untrue.
- 7.3 You agree strictly to comply with all Applicable Laws. If we consider you have not complied, we may terminate the Agreement immediately without notice.
- 7.4 Nothing in this clause affects our rights in these Terms and Conditions. Further, indemnity and limitations provided by you in clause 10 survives termination.

## **8. DEFAULT**

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- 8.1 You are in default if:
- (a) you are in breach of any obligation, warranty or representation made under these Terms and Conditions (whether by act or omission);
  - (b) any information provided to us in connection with these Terms and Conditions is or has become untrue or misleading;
  - (c) we believe, on reasonable grounds, that we were induced by fraud on your part to enter into these Terms and Conditions or any Payment;
  - (d) we consider that you may be in breach of or have failed to comply with any Applicable Law; or

- (e) your Payment fails for any reason.
- 8.2 If you do not remedy the default within fourteen (14) days we will cancel your PayPlan and require you to immediately pay all amounts you owe us (even if they are not otherwise due) including any applicable fees.
- 8.3 You can contact us if you are facing any hardship and are unable to make Payments by the due date.
- 8.4 You acknowledge and agree that we are not responsible for any fees and charges that may be charged by your Financial Institution. You may contact your Financial Institution if any Dishonour Fee has been incorrectly or unfairly processed.
- 8.5 To better secure Your obligations and liability to Franchise Payment Services Pty Ltd (Supplier) hereunder, You, as beneficial owner HEREBY CHARGE in favour of the Supplier all of your estate or interest in any freehold land wheresoever situated which You now have or may hereafter acquire whilst You are indebted or liable contingently liable to the Supplier under this Agreement and You hereby acknowledge that the Supplier shall have a caveatable interest in such land.

## **9. YOUR CONSUMER RIGHTS**

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- 9.1 As a consumer, you have certain rights under consumer protection legislation (“Consumer Rights”). These Consumer Rights include:
  - (a) statutory guarantees under the Australian Consumer Law that services supplied will be provided with due care and skill and be reasonably fit for any specified purpose. When a statutory guarantee is breached, consumers are entitled to a range of remedies including, in some cases, damages for reasonably foreseeable losses; and
  - (b) non-excludable implied warranties that financial services will be provided with due care and skill and that the services and any materials supplied in connection with them will be fit for any specified purpose.
- 9.2 Nothing in these Terms and Conditions is intended to exclude, restrict or modify any of your Consumer Rights, including by limiting our liability or imposing liability on you in a manner which would be considered unfair under the relevant consumer protection laws.

## **10. LIMITATION OF LIABILITY**

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- 10.1 Subject to any laws restricting us from limiting our liability, and to the maximum extent permitted by those laws, we are not liable for:
  - (a) any defects in the services acquired by you through the use of the Franchisee. You acknowledge and accept that all complaints about these services must be addressed to Franchisee who provided those services. Even if you make a complaint or dispute regarding a Payment you must still pay us all amounts and charges charged;
  - (b) any error or inaccuracy in, or unsuitability of, or omission from the Agreement, or any other information provided by us, whether negligent or otherwise;
  - (c) any action we may take under this Terms and Conditions, so long as we act within the terms of its provisions and in particular act reasonably where required to do so;

- (d) anything which is beyond our control and the effect of which is beyond our control to avoid;
- (e) any refusal or failure of Franchisee to accept your instructions at any time or for the quality, performance or other matters in relation to the services paid for with Payments unless this is required by law or a code and is covered by these Terms and Conditions;
- (f) any government restriction, computer or telephone failure, unlawful access to our Website, theft, sabotage, war, earthquakes, strike, and, without limitation, any other conditions beyond our control; and
- (g) any claim, loss, expense, cost or liability suffered or incurred by you (claims) except to the extent that such a loss, expense, cost or liability is suffered or incurred as a result of our gross negligence or wilful default.

10.2 Unless we are prohibited from excluding such liability by law (for example, for losses relating to death or personal injury or caused by our fraud), we will not be liable for any direct, indirect, special, incidental, punitive or consequential damages (including, without limitation, loss of business, loss of profits, failure to avoid a loss, loss of data, loss or corruption of data, loss of goodwill or reputation) caused by any act or omission of ours under this Agreement.

10.3 Regardless of whether we, our employees or agents, knew of the possibility of the claim being incurred, the limitations of liability in this clause shall apply.

## **11. INDEMNITIES**

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11.1 Subject to the Applicable Laws, you agree to continuously indemnify us, and keep us indemnified on demand, in respect of all Losses (including consequential losses), taxes, expenses, damages, charges, receipts, demands and expenses of any nature and on any account and liabilities present, future, contingent or otherwise and including legal fees and administrative costs on a full indemnity basis which may be suffered or incurred or brought against us or in connection with or caused by:

- (a) your breach of these Terms and Conditions;
- (b) you providing us with an invalid, ineffective or non-binding Agreement;
- (c) if for any other reason Payments under this Agreement from the Nominated Card detailed in the PayPlan Form cannot be performed;

(d) any representation or warranty given by you being incorrect, misleading or untrue,

unless and to the extent only such is suffered or incurred as a result of our gross negligence or wilful default.

11.2 To the fullest extent permitted by law, you release, discharge and indemnify and agree to keep Franchise Payment and its respective officers, employees, agents and representatives indemnified from and against all claims arising out of:

- (a) any default, whether by your act or omission under these Terms and Conditions;
- (b) any breach by you of any Applicable Laws;

- (c) any representation or warranty made or given by you under this Terms and Conditions proving to be untrue or incorrect;
- (d) any error, omission, fraud, malfeasance, negligence, misappropriation or criminal act or omission by you;
- (e) anything lawfully done by us in accordance with, pursuant or incidental to these Terms and Conditions;
- (f) any instruction, request or direction given by you; or
- (g) by reason of Franchise Payment Services complying with any direction, request or requirement of any Applicable Laws, any government body or any regulatory body having jurisdiction over Franchise Payment Services.

11.3 This indemnity is a continuing obligation, separate and independent from your other obligations and survives termination of this Agreement.

11.4 It is not necessary for us to incur expense or make Payment before enforcing a right of indemnity conferred by this Agreement.

11.5 This indemnity does not apply to loss as a result of Franchise Payment Services and its respective officers, employees, agents and representatives fraud, negligence or breach of trust.

11.6 You will pay us any sum due under this clause fully without deduction or set-off (and irrespective of any counterclaim) whatsoever.

## **12. WARRANTIES AND REPRESENTATIONS**

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### **12.1 Your Warranties**

- (a) You undertake, warrant and represent to us, with the intention that the following undertakings, warranties and representations are repeated each time you provide instructions to us:
  - (i) you have read and understood the Agreement and the fees and charges that may apply for using our service;
  - (ii) you have the legal capacity and authority to enter into and be bound by this Agreement;
  - (iii) you have entered into this Agreement with Franchise Payment Services on your own free will and have in no way been required to enter into this Agreement by any other person with whom you may be contractually bound, under any contract;
  - (iv) the Nominated Card details provided in the PayPlan Form are correct and you are the cardholder;
  - (v) you are able to pay your debts as and when they fall due and are not otherwise insolvent or presumed to be insolvent under any law;
  - (vi) you are complying with all laws to which you are subject, and the obligations expressed to be assumed by you under these Terms and Conditions are your legal,

valid, binding and enforceable obligations; and

- (vii) at all times the information provided to you by us will be complete, accurate and not misleading.

## 12.2 No Refunds

- (a) You acknowledge and agree that:
  - (i) the service is a Payment plan service only;
  - (ii) Franchise Payment Services acts as a transactional aggregator and sits between you and Franchisee;
  - (iii) Franchise Payment Services does not have any express or implied liability in relation to services provided by Franchisee or the Terms and Conditions of any agreement that you have with Franchisee; and
  - (iv) Franchise Payment Services does not have authority to reverse, or refund authorised Payments. You must contact Franchisee directly for a refund or reversal. Franchisee has absolute authority to refund or deny refunding your Transaction.

## 12.3 Notification of Changes

- (a) You undertake that throughout the term of these Terms and Conditions you will promptly notify us of any change to your details including but not limited to:
  - (i) your contact details;
  - (ii) you have changed your name, either first or last name;
  - (iii) you have been declared bankrupt or commit an act of bankruptcy; or
  - (iv) your Nominated Card changes.
- (b) You must also tell us if you think there is any information that we should be aware of about your ability to comply with this Agreement.

## 12.4 Statutory Warranties

- (a) Where any Applicable Law implies in these Terms and Conditions any term, condition or warranty, and makes void or prohibits excluding or modifying the application of or exercise of, or liability under such term, condition or warranty, such term, condition or warranty will be deemed to have been included in these Terms and Conditions. However, our liability for any breach of such term, condition or warranty will be limited, at our option, to any one or more of the following:
  - (i) if the breach relates to services:
    - A. the supplying of the services again; or
    - B. the payment of the cost of having the services supplied again.

## 13. COMPLAINTS AND DISPUTE RESOLUTION

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13.1 You should inform us immediately of any dispute or difference involving a Payment or in connection with these Terms and Conditions. We will investigate and endeavour to resolve any dispute or difference in accordance with our internal customer service team.

13.2 You can contact us by:

- (a) **Email:** [info@franchisepaymentservices.com](mailto:info@franchisepaymentservices.com); or
- (b) **Telephone:** (02) 8599 8413

### 13.3 How Disputes Are Dealt With

- (a) any dispute or difference in connection with this Terms and Conditions must be dealt with by you in Australia, in accordance with our procedures from time to time for handling disputes.
- (b) the dispute or difference may be submitted by us to arbitration in accordance with and subject to the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules the Arbitrator will be a person recommended by the New South Wales Chartered of Arbitrators and Mediators of Australia; or
- (c) you may request us to refer the dispute to arbitration in accordance with clause 13.3(b) above, and:
  - (i) we may decide in our absolute discretion whether to agree to any such request;
  - (ii) without agreement by us in accordance with this paragraph, you will not be able to refer the dispute or difference to arbitration, but will have to submit for the benefit of us only the dispute or difference to the exclusive jurisdiction of the Courts of New South Wales.
- (d) For the avoidance of doubt, this clause will not prevent us from commencing proceedings in any other jurisdictions for the enforcement of any such determination.

### 13.4 Where We May Commence Legal Proceedings

- (a) Clause 13.3 is for the benefit of us only, and it does not prevent us from commencing proceedings against you in any relevant jurisdiction, in addition to submitting any dispute or difference whatsoever with you in connection with this Terms and Conditions to arbitration in accordance with clause 13.3(b) of this Terms and Conditions.

## 14. PRIVACY

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### 14.1 Personal Information

- (a) In the course of providing services to you under these Terms and Conditions, it will be necessary for us to obtain and hold personal information that we will obtain in accordance with Applicable Laws.

- (b) You agree that we can rely on, hold and process personal information for the purpose of performing our services and obligations under these Terms and Conditions and for the purpose of improving those services. We will make reasonable efforts to keep such information that we have about you secure and that any of our employees or agents who have access to this information do not make any unauthorised use, modification, reproduction or disclosure of that information.
- (c) If you do not provide the information requested by us or agree to our information handling practices detailed in these Terms and Conditions, we may not be able to provide our services to you.
- (d) We may conduct a credit check on you, which may include obtaining your credit report from a credit reporting body. Any information we collect about you will be handled in accordance with our privacy statement as contained under Schedule 1. We will only disclose information that we have for the purposes of this Agreement including disclosing information in connection with any query or claim or to a credit reporting agency.
- (e) We collect, hold, handle and/or disseminate your information in a way that it is at all times compliant with the Privacy Act 1988 and its provisions. You can access our Privacy Policy here <http://www.franchisepaymentservices.com/privacy/>

#### **14.2 Access to and Change of Information**

- (a) You may contact us if you wish to request access to any personal information that we hold about you.
- (b) You must immediately notify us if any of your personal information that you have previously provided to us changed. This is a continuing obligation of yours.
- (c) We may conduct a credit check on you, which may include obtaining your credit report from a credit reporting body. Any information we collect about you will be handled in accordance with our privacy statement.

### **15. NOTICES**

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#### **15.1 Notices Must be in Writing**

- (a) Subject to clause 15.2, any notice or other communication given or made under or in connection with the matters contemplated by these Terms and Conditions will, except where oral communication is expressly provided for, be sent to the email address below:

Email: [info@franchisepaymentservices.com](mailto:info@franchisepaymentservices.com)

#### **15.2 Provision of Notice**

- (a) This Agreement and any other agreements, notices or other communications regarding the use of our services may be provided to you electronically.
- (b) You agree to receive all communications from us in electronic form.
- (c) Communications will be posted on our Website or sent to your primary email address.

### 15.3 When Notices are Received

- (a) Notices are deemed to be received when the email enters the service of your email address.
- (b) Alternatively, we may give you notice by mail to the address you have provided to us. In such case, you shall be deemed to be given notice three (3) days after the date of the mailing.

### 15.4 Change of Notice Details

- (a) You may alter your email address to which automated emails and other communications are issued to you, by giving written notice to us via email. We may notify you of a change to any of our details as stated above, provided in either case that such alteration will only be effective on the later of the date specified in the notice and the time of deemed service under clause 15.3 of this Terms and Conditions.

### 15.5 Deemed Notice

- (a) You agree and acknowledge that any automated emails or other electronic notices will be deemed to have been properly given or made available if sent to the email address last notified to us by you or if provided under the PayPlan Form.

## 16. MISCELLANEOUS

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### 16.1 Governing Law and Jurisdiction

- (a) These Terms and Conditions will be governed by and construed in accordance with the law of New South Wales, Australia.
- (b) You and we submit, for the benefit of us only, to the exclusive jurisdiction of the law of New South Wales, Australia. For the avoidance of doubt, this clause will not prevent us from commencing proceedings in any other relevant jurisdiction.

### 16.2 Assignment and Delegation

- (a) The following provisions apply in relation to assignment and delegation:
  - (i) you may not assign or deal with any of your rights or delegate any of your obligations under this Terms and Conditions to any person without our prior written consent.
  - (ii) we may assign or deal with our rights or delegate any of our obligations under this Terms and Conditions to any person, without the need to obtain consent from you, subject to obtaining regulatory approval where, and to the extent that such approval is required by law.

### 16.3 Cumulative Rights and Remedies

- (a) The rights, powers, authorities, discretions and remedies of a party under these Terms and Conditions are cumulative and not exclusive of any rights or remedies provided by law.



#### 16.4 Rights of Third Parties

- (a) Nothing in these Terms and Conditions is intended to confer on any person other than us or you any right to enforce any term of these Terms and Conditions.

#### 16.5 Illegality

- (a) If at any time any provision of these Terms and Conditions is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of these Terms and Conditions under the law of that jurisdiction nor the legality, validity or enforceability of such provisions under the law of any other jurisdiction will be in any way affected.

#### 16.6 Delay, Omission and Waiver

- (a) The following provisions apply to any delay, omission and waiver:
  - (i) No delay or omission on our part in exercising any right, power or remedy provided by law or under this Terms and Conditions, or partial or defective exercise thereof, will:
    - A. impair or prevent further or other exercise of such right, power or remedy; or
    - B. operate as a waiver of such right, power or remedy.
  - (ii) No waiver of any breach of any term of these Terms and Conditions will (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.

### 17. CONTACT DETAILS

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17.1 You can contact us by:

#### **Franchise Payment Services Pty Ltd**

- (a) Address: Suite 4.07, 10 Century Circuit, Norwest NSW 2153;
- (b) Email: [info@franchisepaymentservices.com](mailto:info@franchisepaymentservices.com);
- (c) Telephone: (02) 8599 8413; or
- (d) Website: [www.franchisepaymentservices.com](http://www.franchisepaymentservices.com)

### 18. INTERPRETATION

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- 18.1 If there is any conflict between the terms of these Terms and Conditions and any Applicable Law, the Applicable Law (to the extent it cannot be excluded or modified by this Terms and Conditions) will prevail.
- 18.2 Headings and examples in these Terms and Conditions are for reference only and do not affect the construction of the Agreement.

- 18.3 In these Terms and Conditions any reference to any enactment includes references to any statutory modification or re-enactment of such enactment or to any regulation or order made under such enactment (or under such a modification or re-enactment).
- 18.4 The terms and expressions in these Terms and Conditions have defined meanings, these meanings and the rules of interpretation, are set out in clause 19.

## 19. DEFINITIONS

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In this Terms and Conditions, the following terms and expressions have, unless the context otherwise requires, the following meanings:

<b>AML/CTF LAWS</b>	means the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and all regulations, rules and instruments made under that Act.
<b>AMOUNT DUE</b>	means the amount entered into your PayPlan Form in respect of the Invoice.
<b>APPLICABLE LAWS</b>	means all provisions of laws and regulations, including all relevant rules of government agencies, and self-regulatory organisations, that apply to the parties, the Agreement and the Payments contemplated by the Agreement.
<b>BUSINESS DAY</b>	means a day other than a Saturday, Sunday or public holiday on which banks are open for business in New South Wales.
<b>CLIENT NUMBER</b>	means a number provided to you to identify your PayPlan.
<b>DISHONOUR FEE</b>	means any charge that you may receive from your Financial Institution when we attempt to deduct a Payment from your Nominated Card but it does not have sufficient funds or is otherwise unsuccessful.
<b>FINANCIAL INSTITUTION</b>	otherwise known as banking institutions means corporations that provide services as intermediaries of financial markets.
<b>FIRST INSTALMENT PAYMENT</b>	means the first Payment made on the date that the PayPlan is entered into with you.
<b>KNOW YOUR CLIENT</b>	means identification procedures undertaken to verify the identity of customers.
<b>INSTALMENT</b>	means any periodic Payment as specified as part of your PayPlan as outlined under the Payment Schedule in PayPlan Form
<b>INVOICE</b>	means a document provided to you upon receiving household related services from a Franchisee.

<b>FRANCHISEE</b>	means a Franchisee that allows you to purchase household related services using a PayPlan.
<b>NOMINATED CARD</b>	means the credit or debit card entered into the credit card entry screen of the PayPlan Form that is part of this Agreement including any card you later notify us in substitution for that card. This card must be issued in your name.
<b>OUTSTANDING BALANCE</b>	means the difference between all amounts owing under the PayPlan and the sum of all successfully completed Payments.
<b>PAYMENT</b>	means a Payment made to us.
<b>PAYMENT SCHEDULE</b>	means a Payment Schedule provided to you as part of your PayPlan.
<b>PAYPLAN</b>	means an instalment Payment arrangement entered into by you and governed by these Terms and Conditions in respect of a purchase from a Franchisee.
<b>PAYPLAN FORM</b>	means the online application completed in respect of a purchase from a Franchisee.
<b>SCHEDULE 1</b>	means the disclosure of your information to a Reporting Agency.
<b>TRANSACTION</b>	means a payment made by us to a Franchisee, upon receiving clearance of the First Instalment Payment, authorised by you and accepted and authorised by us under these Terms and Conditions.
<b>TOTAL PAYMENT AMOUNT</b>	Means the total amount owing upon receiving the services from a Franchisee.
<b>US and WE</b>	means Franchise Payment Services.
<b>YOU and YOUR</b>	means all persons entering this Agreement other than us.
<b>WEBSITE</b>	means <a href="http://www.franchisepaymentservices.com">www.franchisepaymentservices.com</a>

## **20. NOTICE OF DISCLOSURE OF YOUR CREDIT INFORMATION TO A CREDIT REPORTING AGENCY**

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20.1 We may give information about you to a credit reporting agency, for the following purposes:

- (a) To obtain a consumer and/or commercial credit report about you entering into a PayPlan; and
- (b) To allow the credit reporting agency to create or maintain a credit information file containing information about you.

20.2 Please see Schedule 1 for further information.

## Schedule 1 - DISCLOSURE OF YOUR CREDIT INFORMATION

### NOTICE OF DISCLOSURE OF YOUR CREDIT INFORMATION TO A CREDIT-REPORTING AGENCY. (SECTION 18E(1) OF THE ACT 1988)

Franchise Payment Services Pty Limited ACN654 054 823 ("FPS") may give information about you to a credit reporting agency, for the following purposes:

- To obtain a consumer and/or commercial credit report about the Franchisee, and/or
- To allow the credit reporting agency to create or maintain a credit information file containing information about you.

Words defined in the FPS Fee Service Agreement have the same meanings in this notice. The information is limited to:

- Identity particulars - your name, sex, address (and previous two addresses) date of birth, name of employer, and drivers licence number.
- Your application for credit or commercial service - the fact that you have applied for credit and the amount.
- The fact that FPS is a current credit provider to you.
- Loan repayments which are overdue by more than 60 days, and for which debt collection action has started.
- Advice that your loan repayments are no longer overdue in respect of any default that has been listed.
- Information that, in the opinion of FPS you have committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with your credit obligations).
- Dishonoured cheques - cheques drawn by you for \$100 or more which have been dishonoured more than once.
- That credit has been paid or otherwise discharged.

### PERIOD TO WHICH THIS UNDERSTANDING APPLIES

This information may be given before, during or after the provision of service to you.

### STATEMENT BY APPLICANT(S)

Please read carefully before signing. Where there is more than one applicant, each applicant must sign.

#### 1. Giving information to a Credit Reporting Agency

FPS has informed me that it may give certain personal information about me to a credit-reporting agency.

#### 2. Access to Commercial Credit Information

I/we agree that FPS may obtain information about me/ us from a business, which provides information about the commercial credit worthiness of persons for the purpose of assessing my/our application to use the FPS service.

### 3. Access to Consumer Credit Information

I/we agree that FPS may obtain a consumer credit report containing information about me from a credit-reporting agency for the purpose of assessing my/our application to use the FPS service.

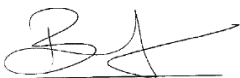
### 4. Exchange of Credit Worthiness Information

I/we agree that FPS may exchange information with those credit providers named in this application or named in a consumer credit report issued by a credit reporting agency or with a credit assessor engaged by FPS for the following purposes;

- to assess an application by me/us for credit
- to notify other credit providers of a default by me/us
- to exchange information with other credit providers as to the status my/our account with FPS where I am in default with other credit providers
- to assess my/our credit worthiness.

I/we understand that the information exchanged can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.

**Executed by Franchise Payment Services Pty Limited** in accordance with the section 127 of the Corporations Act:



**Bruce Coombes**  
Director



**Simon Yeandle**  
Secretary