

## SCHEDULE 1

This tripartite deed will be effective from the date and time that the card member clicks on the box acknowledging their acceptance of the terms and conditions in this agreement.

1 **RewardPay Pty Limited**  
ABN 92 166 007 227  
of Level 10, 68 Pitt Street, Sydney, NSW 2000  
(Aggregator)

2 **American Express Australia Limited**  
ABN - 92 108 952 085  
of 12 Shelley Street, Sydney, NSW 2000  
(American Express)

3 **Cardmembers**  
To execute this tripartite deed, Cardmembers will electronically check the box confirming "I have read and agree with the terms and conditions set out in the tripartite deed", located on the Payment Page of the Aggregator's Payment Facility.

### This deed witnesses

#### 1 Definitions

In this deed:

**Aggregator** means RewardPay who accepts an American Express Card as payment for goods and services.

**Aggregator Terms and Conditions** means the Aggregator Acceptance Agreement which incorporates the American Express terms and conditions governing the acceptance of the American Express Card by Merchants, as issued and amended by American Express from time to time.

**American Express Card** means a charge card issued by American Express to Cardmembers.

**Business Day** means a day on which banks are ordinarily open for business in New South Wales, except Saturday, Sunday or a public holiday in New South Wales.

**Chargeback** has the meaning set out in clause 3.1.

**Cardmember** means any person having an account with American Express and any other persons to whom American Express issues an American Express Card on that account.

**Customer's Card** means an American Express Card issued by American Express in the name of the Customer or any authorised officer of the Customer (on the corporate account of the Customer) which is within the validity dates shown on the face of the card.

**Customer Terms and Conditions** means all terms and conditions governing the issue and use of American Express Cards by Cardmembers, set out in the documents known as the "American Express Account Agreement" with the Customer and the "American Express Card Conditions" with Cardmembers, as issued and amended by American Express from time to time.

**Disputed Amount** has the meaning set out in clause 3.2.

**Party** means a party to this deed.

**Payment Facility** means the online Cardmember initiated Payment Facility which allows its users to initiate payment for goods or services provided by a number of different Suppliers hosted by the Aggregator.

**Person** includes a firm, a body corporate, an unincorporated association or an authority.

**Supplier** means the supplier of the goods or services being sold to the Customer using the Payment Facility.

**Supply Contract** means any contract between the Supplier and the Customer for the supply of goods/services.

#### 2 Purchases from Aggregator using Customer's Card

The Aggregator, American Express and the Customer agree that:

- 2.1 the Customer may pay for products/services from the Supplier using the Aggregator's Payment Facility or otherwise using a Customer's Card, where the relevant payment is approved and accepted by American Express;
- 2.2 the Customer agrees to authorise payment of those products/services at the time of using the Aggregator's Payment Facility;
- 2.3 the Customer has no entitlement to dispute (subject to clauses 3, 4.2 and 4.3), to withhold or recover from, or to request American Express to dispute or to withhold or recover from, the Aggregator any payment to the Aggregator for purchases from the Supplier using the Aggregator Payment Facility made using a Customer's Card. For the avoidance of doubt, nothing in this provision affects either parties dispute rights under the Payment Facility;
- 2.4 the Customer agrees to pay American Express the full amount for any disputed charges and not to withhold any amount pending dispute resolution under the Supply Contract or the Payment Facility; and
- 2.5 the Aggregator and the Customer agree to make any required adjustments between themselves in relation to any disputed charges following dispute resolution under the Payment Facility.

#### 3 Chargebacks

3.1 Subject to clause 3.2, American Express has no entitlement, whether at the request of the Customer or otherwise, to:

- (a) dispute, withhold or recover any payment to the Aggregator for purchases made using a Customer's Card;
  - (b) credit the account of the Customer or the holder of a Customer's Card with the amount charged by the Aggregator for purchases made using the Aggregator's Payment Facility using a Customer's Card; or
  - (c) pursue any right of the Customer or a holder of a Customer's Card against the Aggregator in relation to any purchases made using the Aggregator's Payment Facility using a Customer's Card,
- (each a **Chargeback**).

3.2 If:

- (a) American Express notifies the Aggregator in writing that it wishes to effect a Chargeback of an amount (**Disputed Amount**) because of a fraudulent or illegal act, or due to material non-compliance with the Aggregator Agreement sets out details of the proposed Chargeback; and
- (b) it is determined after following the procedure set out in clauses 3.4 and 3.5 that the Aggregator is not entitled to the Disputed Amount,

then American Express is entitled to Chargeback the Disputed Amount.

3.3 If American Express effects a Chargeback in breach of this clause 3, then American Express must credit the Aggregator's account with the amount of the Chargeback within 3 Business Days of a request to do so from the Aggregator.

3.4 Following notice under clause 3.2, American Express and the Aggregator agree to meet to discuss the details of the Disputed Amount and whether the Aggregator is entitled to the Disputed Amount.

3.5 If American Express and the Aggregator cannot agree whether the Aggregator is entitled to the Disputed Amount within 15 Business Days, then American Express and the Aggregator will jointly appoint an arbitrator to determine whether the Aggregator is so entitled, as chosen by the president of the Institute of Arbitrators and Mediators of Australia. The party that the arbitrator determines is not entitled to the Disputed Amount will pay the cost of the arbitrator.

#### 4 Payment Facility

The Aggregator and the Customer agree that:

- 4.1 the Customer must not request American Express to dispute, withhold or recover from the Aggregator any payment for the purchase of products/services or otherwise from the Aggregator made using a Customer's Card, unless the Aggregator was not entitled to the payment under the Payment Facility;
- 4.2 any dispute or claim by the Customer about the quantity or quality of, or any other matter relating to, products/services paid for using the Aggregator's Payment Facility must be dealt with between the Customer and the Supplier under the Supply Contract; and
- 4.3 the Customer indemnifies the Aggregator against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment suffered, paid or incurred by the Aggregator in relation to the non-payment or non-recovery of any amount owing by the Customer to the Aggregator relating to products/services paid for using the Payment Facility or otherwise, and paid for using the American Express Card.
- 4.4 Nothing in this deed relieves the Customers of its obligations under the Supply Contract including in respect of any obligation to pay the charges due under the Supply Contract within the required payment terms.

#### 5 Customer Terms and Conditions

American Express and the Customer agree that, for the purposes of any transaction between the Aggregator and the Customer (or the holder of a Customer's Card) using a Customer's Card, the Customer Terms and Conditions are amended by deleting all entitlements of:

- 5.1 a Cardmember to dispute, to withhold or recover, and to request American Express to withhold or recover, any payment to a the Aggregator; and
- 5.2 American Express to:
  - (a) dispute, withhold or recover, any payment to a the Aggregator;



- (b) credit the account of a Cardmember with the amount charged by a the Aggregator for any goods or services purchased by use of an American Express Card; and
- (c) pursue any right of a Cardmember against a the Aggregator in relation to any goods or services purchased by use of an American Express Card,

and any entitlement to dispute a charge or to Chargeback a Disputed Amount will be dealt with in accordance with this deed.

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## 6 The Aggregator Terms and Conditions

Notwithstanding the provisions of the Aggregator Terms and Conditions, American Express and the Aggregator agree that, for the purposes of any transaction between the Aggregator and the Customer (or the holder of a Customer's Card) using the Customer's Card, any entitlement to dispute a charge or to Chargeback a Disputed Amount will be dealt with in accordance with this deed.

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## 7 General

- 7.1 **Notices:** Any notice or other communication to or by a party to this deed must be in legible writing, in English, signed by the party or an authorised officer of the party, addressed as set out at the commencement of this deed or as otherwise specified by a party by written notice, and delivered in person or sent by post, facsimile or email.
- 7.2 **Term:** If the Merchant's Card Acceptance Agreement is terminated by American Express then this Deed will terminate on 7 days notice and any outstanding charges for goods or services must be approved and paid for before the expiration of the 7 day notice period. In all other cases, any party to this Deed must give 3 months notice to terminate.
- 7.3 **Assignment:** A party may not assign or novate its rights or obligations under this deed without the consent of the other parties (which consent may be given or withheld in a party's absolute discretion).
- 7.4 **Further documents:** Each party must do all things and execute all further documents necessary to give full effect to this deed and use reasonable endeavours to cause relevant third parties to do the same.
- 7.5 **Execution of the tripartite deed:** American Express and the Aggregator have executed this tripartite deed, evidenced by the signatures of respective authorised representatives below. Agreement with the terms and conditions of this tripartite deed by both American Express and the Aggregator is standing in nature, and covers all transactions (future, past and present) that are processed through the Aggregator's Payment Facility. To complete execution, Cardmember's are required to electronically check a box confirming "I have read and agree with the terms and conditions set out in the tripartite deed", located on the Payment Page of the Aggregator's Payment Facility. When a Cardmember electronically checks this box and confirms payment the tripartite deed is acknowledged to be executed by all parties (American Express, the Aggregator and the Cardmember).
- 7.6 **Waiver:** Waiver of any right, power, authority, discretion or remedy arising upon default under this deed must be in writing and signed by the party granting the waiver.
- 7.7 **Interpretation:** No term or condition of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or that provision.
- 7.8 **Counterparts:** This deed may be executed in any number of counterparts which together will constitute one instrument. A party may execute this deed by signing any counterpart. Cardmembers may electronically check the box confirming "I have read and agree with the terms and conditions set out in the tripartite deed", located on the payment confirmation screen of the Aggregator's Payment Facility.
- 7.9 **Costs:** Each party must pay its own costs and expenses in respect of the negotiation, preparation, execution and delivery of this deed.
- 7.10 **Governing law:** This deed is governed by the laws in force in New South Wales and each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales.

Executed as a deed:

EXECUTED BY  
REWARDPAY PTY LIMITED  
ABN 92 166 007 227

in accordance with its Constitution  
by its authorised officer

Signature of Witness

GIUSEPPA VALENTE

Name and address of Witness

71 Yavalla st Concord West

Signature of Authorised Officer

ANDREW M'CRATH

Name of Authorised Officer

MANAGING DIRECTOR

Position of Authorised Officer

EXECUTED BY  
AMERICAN EXPRESS AUSTRALIA LIMITED  
ACN 108 952 085

in accordance with its Constitution  
by its authorised officer  
for and on behalf of the company  
in the presence of:

Signature of Witness

KEVIN J TANNER

B2B CLM, Amex, 12

Name and address of Witness

SHELLEY ST SYDNEY

Signature of Authorised Officer

ALISTER KNIGHT

Name of Authorised Officer

DIRECTOR B2B ACQUISITION

Position of Authorised Officer

AMERICAN EXPRESS

EXECUTED BY  
CARDMEMBER

To execute this tripartite deed, Cardmembers must electronically check  
the box confirming "I have read and agree with the terms and conditions  
set out in the tripartite deed", located on the Payment Page of the  
Aggregator's Payment Facility.