

TERMS AND CONDITIONS

OCTOBER 2021

1. GENERAL TERMS AGREEMENT

- 1.1 These Terms and Conditions along with the signed Application Form and Fee Schedule constitute your agreement with the Company. By submitting to the Company a properly completed and signed Application Form, the Customer offers to enter into an agreement on, and be bound by these General Terms.
- 1.2 No agreement is entered into unless and until the Company notifies the Customer in writing that the Application Form submitted by the Customer is accepted or approved.
- 1.3 The Company may require the Customer to provide specific documentation and/or information for assessment of the application and verification of information provided in the Application Form.
- 1.4 The Agreement comprises the following:
 - (a) the Application Form;
 - (b) these General Terms;
 - (c) the Schedule(s) if applicable;
 - (d) any additional document that the parties may agree in writing from time to time.

2. FEES AND PAYMENTS

2.1 Fees

- (a) The Company will charge the Customer in accordance with the Application Form and/or the Schedules (as applicable).
- (b) The Customer must pay the Fees to Company (without deduction, withholding, or set-off) in the manner within timeframes set out in the Application Form and/or the Schedules (as applicable).
- (c) The Company may set-off any monies due to it under this Agreement from any monies payable by it under this Agreement except to the extent the amount of the monies due is disputed (on reasonable grounds by the Customer)

2.2 Disputes of Fees

- (a) If either party (acting reasonably) disputes part or all of an invoice submitted by the other party, then the party disputing the invoice will advise the other in writing (within 10 Business Days of receipt of the invoice) of the reasons for the dispute and, where

only part of the invoice is in dispute, will pay to the other party the amount which is not in dispute.

- (b) Upon receipt of notification, both parties will endeavor to resolve the dispute with 7 days.

2.3 Review of Fees

On each anniversary of the Commencement Date, Company may review the Fees and increase the Fees by not more than the increase in the CPI for that year, unless otherwise specified in a Schedule or mutually agreed by the parties in writing.

3. RIGHTS TO EQUIPMENT

- 3.1 The Customer acknowledges the Company owns the Equipment, the Documentation and other associated materials that the Company may provide. The Customer agrees that it does not have any ownership rights over the Equipment, Documentation, and other associated materials.
- 3.2 For the purposes of clause 3.1, the Customer must:
 - (a) where applicable, deal with Equipment in a manner which is consistent with and preserves the Company's rights over the Equipment; and
 - (b) not grant any security interest, charge, or lien over the Equipment; and
 - (c) not attach the Equipment to any property, causing it to become a fixture; and
 - (d) immediately return the Equipment, the Documentation and other associated materials upon termination or expiry of this Agreement.

4. USE AND OPERATION OF EQUIPMENT

- 4.1 The Customer acknowledges and agrees that only the Company or its representatives are entitled to maintain, replace (including upgrades performed by the Company for time to time) or remove the Equipment, unless otherwise agreed by the Company in writing.
- 4.2 The Customer must:
 - (a) Use and operate the Equipment with reasonable care only in accordance with the manuals and any other instructions provided to the Customer by the Company and allow only fully trained staff to operate the Equipment;

- (b) allow the Company to upgrade the Equipment as required including when industry or security standards change;
- (c) keep the Equipment secure and under its control and, unless otherwise agreed by Company, at the premises at which it was installed (or at such other location as is agreed by Company);
- (d) not provide the Equipment to a third party or allow the Equipment to be used by a third party unless otherwise approved by the Company in writing;
- (e) remove from the Equipment any communication mechanism (SIM) which is installed in the Equipment, unless such SIM has been provided by the Customer;
- (f) insure the Equipment against theft, loss, damage, vandalism, fire, flood, earthquake, misuse or neglect, for its full replacement value;
- (g) take proper care of the Equipment and be responsible for any costs incurred in the replacement or repair of the Equipment due to theft, loss or damage as a result of failure to take reasonable care and proper maintenance, excepted fair wear and tear;
- (h) not remove any stickers, markers, identifiers, which are used to identify the Equipment and/or owner of the Equipment (i.e. the Company)
- (i) Immediately alert the Company, if the Equipment has been damaged, stolen or mislaid or if it suspects that the Equipment has been tampered with;
- (j) not modify the Equipment in any way;
- (k) ensure the Equipment receives all software updates in a timely manner by leaving the Equipment powered on and connected.

5. TAXES

5.1 Good & Services Tax

All Fees and other amounts payable by the Customer to the Company under this Agreement are exclusive of any applicable GST and any other sales or service, tax, custom, duty or other tax other than a tax on the Company's income and accordingly, where applicable, GST will be payable in addition to those Fees and amounts at the rate from time to time in force against delivery of a valid GST invoice.

6. TERM AND TERMINATION

6.1 Term

This Agreement commences on the Commencement Date and, unless terminated in accordance with its terms, will continue in full force and in effect for the period agreed between the parties. Unless otherwise terminated by either party in accordance with its terms, this Agreement will then be automatically renewed by successive periods as agreed between the parties.

6.2 Termination by Company alone

The Company may terminate this Agreement if the Customer is in default of this Agreement and has not rectified the default within 30 days of notice given by the Company.

6.3 Consequences of termination or expiry

On the effective date of termination or expiry of this Agreement or a Schedule for any reason:

- (a) each party must pay all amounts owing to the other party under this Agreement or the relevant Fee Schedules (as the case may be) up to the date of termination or expiry within 14 days of termination or expiry;
- (b) the Company may repossess any of its property in the possession, custody, or control of the Customer for the purposes of this Agreement or the relevant Schedule (as the case may be), except to the extent and for the time it continues to be required for the performances of surviving obligations or exercise of surviving rights.

7. WARRANTIES

7.1 General Warranties

Each party warrants that it:

- (a) has taken all action which is necessary to authorize the entry into the performance of its obligations under this Agreement;
- (b) has the power, without any further consent of any other person, to enter into and perform its obligations under this Agreement.

7.2 Customer Warranty

The Customer warrants to the Company that, at the Commencement Date, the Customer is not aware of any matter that might adversely affect its ability to comply with its obligations under this Agreement (including the Customer Responsibilities)

8. LICENSE AND AUTHORISED USE OF PAYMENT APPLICATION AND SOFTWARE

8.1 License

Subject to the terms of this Agreement, the Company grants to the Customer and the Customer accepts from Company, a non-exclusive, personal, and non-transferable license, in respect of the Payment Application and Software, to use the Payment Application and Software and the Documentation for the initial Term and, if extended, Additional Terms, in object code form only, for use on the Equipment. The provisions under this clause 8 shall apply to each individual license over each copy or reproduction of the Payment Application and Software granted to or help by the Customer.

8.2 Authorized Use of Payment Application and Software

(a) The Customer shall not use the Payment Application and Software for any purpose other than in connection with the Equipment. The Customer shall not cause or permit the reverse engineering, dissemination or decompilation of the Payment Application and/or Software. (b) The Payment Application and Software shall be used only for the Customer's own business and not used for any other purposes.

8.3 No Transfer of Software

The Customer shall not lend, sell, lease, sublicense or otherwise dispose of any of the Payment Application and Software license under the Agreement and this Schedule, without the prior written approval of the Company. Such approval may be withheld for any reason or for no reason at the Company's sole discretion.

9. DATA PROTECTION /PRIVACY

9.1 Each of the Customer and the Company undertakes to comply fully with the Privacy Legislation applicable to it in relation to personal data processed by or on behalf of it in connection with this Agreement.

9.2 If the Company processes personal data as data processor for the Customer pursuant to this Agreement, the Company shall:

(a) only use the personal data for the performance of its obligations under this Agreement and as reasonably necessary for the performance, administration and enforcement of this Agreement and shall act only on the instructions from the Customer in connection with such personal data; (b) maintain technical and organisational security measures governing the personal data sufficient to comply at least with the obligations imposed on the Customer set out in the Privacy Legislation.

(c) co-operate so far as is reasonable with the Customer in complying with any subject access request and/or responding to any enquiry made or investigate or assessment of processing initiated by the Privacy Commissioner in the respect of the personal data.

9.3 The Customer acknowledges and agrees that the Company may collect and use payment and transaction related data obtained through the performance of its obligations under this Agreement, and the Company may collect, use, transfer, and disclose such information for any purpose, as long as it is in a form that does not include confidential information or personally identifiable information and such collection, use, transfer and disclosure are in accordance with the Privacy Legislation applicable to it.

10. LIMITATION OF LIABILITY

10.1 To the maximum extent permitted by law, the Company's liability to the Customer (and its Related Bodies Corporate) for all claims made against it or loss or damage suffered or incurred by the Customer (and/or its Related Bodies Corporate) arising out of or in connection with this Agreement (regardless of how the loss or damage arises or the basis on which the claim is made, including breach of contract, tort (including negligence), misrepresentation, or otherwise) is limited as follows:

(a) in respect of any claim for the supply of services, resupply of services or of the payment of the costs of resupplying the services, for breach of a statutory warranty or guarantee, liability shall be limited to the amount recoverable by the Company under any policy of insurance provided or the cost of resupplying the services, whichever is the greater; and

10.2 The Company will not be liable for any consequential, direct or indirect loss however caused arising from or in connection with this Agreement (regardless of how the loss or damage arises or the basis on which the claim is made, including breach of contract, tort (including negligence), misrepresentation, or liability under an indemnity).

11. GENERAL PROVISIONS

11.1 A party may not assign or novate this Agreement.

11.2 This Agreement and each Schedule are governed by the laws of New South Wales (NSW) and the parties submit to the non-exclusive jurisdiction of the courts of NSW, and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

11.3 Nothing in the Agreement excludes or restricts a party's rights, remedies or liability under the law governing this Agreement in relation to any statement, representation or warranty made fraudulently or to any provision of this Agreement which was induced by the fraud for which the remedies will be all those available under the law governing this Agreement. Subject to the foregoing, this Agreement (including the Application Form, these General Terms and the Schedules agreed pursuant to it from time to time) contains the entire agreement and understanding of the parties and supersedes all prior agreements, understandings, or arrangements (both oral and written) relating to the subject matter of this Agreement.

12. DEFINITIONS AND INTERPRETATION

Unless a contrary intention appears, capitalized terms used in this Agreement or in a Schedule have the following meanings:

Application Form means the DataMesh Group Application Form to be completed and submitted by the Customer to the Company.

Agreement has the meaning set out in clause 1.

Business Day means any day of the week, excluding Saturday and Sunday, and any national and public holidays in Australia.

Commencement Date means the date on which the Company notifies the Customer that the Application Form is accepted and approved or such other date as the parties may agree upon.

Company refers to Data Mesh Group Pty Ltd ACN 629 446 251.

CPI means the Consumer Price Index published by the Australian Bureau of Statistics.

Customer refers to the entity outlined in section 1 and 2 of the Application Form.

Customer Responsibility means any task which is expressly identified in this Agreement as a customer responsibility and/or obligation and which needs to be performed to enable the Company to provide the Services and/or the Deliverables in accordance with this Agreement.

Deliverables means the deliverables to be provided by the Company to the Customer as set out in the Application Form, the Schedule and/or such other documents agreed between the parties in writing.

Documentation means the documents to be delivered together with the Payment Application and Software, the Equipment and other Deliverables.

Equipment means the Electronic Payment Terminals devices, embedded software and associated equipment to be supplied by the Company to the Customer.

Fees means the amounts payable by the customer to Company under this Agreement including as specified in the Fee Schedules.

General Terms means these terms and conditions including any Appendix thereto.

GST means Good and services Tax as per a New Tax System (Goods and services Tax) Act 1999(Cth)

Payment Application and Software means the DataMesh mobile application or software program installed and used on an electronic device (including the Equipment) for processing payment which stores, processes, or transmits card data as part of authorization or settlement.

Privacy Legislation means the Privacy Act 1988 (Cth), and all other applicable laws relating to the processing of information, privacy, the protection of personal information in electronic communications, and direct marketing, including any applicable laws or regulation which supersedes, replaces, or implements any of the foregoing in Australia.

Regulatory Authority means a payment scheme operator and any governmental, regulatory, or other competent authority that has responsibility for regulating or overseeing all or any part of Company's or the Customer activities or business.

Related Body Corporate means a related body corporate defined by sections 50 of the Corporations Act 2001 (Cth).

Schedule means the Application Form or such other documents that set out the details of the Services, the Deliverables and payment of Fees agreed by the parties in writing.

Services means the services to be provided by the Company to the Customer as set out in the Application Form, the Schedule and/or such other documents agreed between the parties in writing.

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