

## MERCHANT AGREEMENT

### BETWEEN

- A. The entity nominated in the PSP application form and approved by the PSP (the **Company/You**);
- B. IntegraPay Pty Ltd (ABN 63 135 196 397) (**PSP**)
- C. First Data Merchant Solutions Australia Pty Ltd ABN 51 115 245 531 of Level 11, 168 Walker Street, North Sydney NSW 2060 (**Acquirer**)

### RECITALS

- A. In order for PSP to provide certain services under the IntegraPay Australia Terms and Conditions (the **PSP Agreement**), the Company, PSP and Acquirer must enter into this Tri-partite Merchant Agreement.
- B. The Company acknowledges that for transactions processed under this Agreement, First Data Merchant Solutions Australia Pty Ltd is the Acquirer.
- C. Acquirer is a member in the Networks and agrees to appoint PSP as its exclusive agent to provide Acquiring Services to the Company.

### AGREEMENT

- A. This Agreement is a binding legal agreement which comprises the following documents:

Application	IntegrPay Application Form (Online)
Terms and Conditions	<ol style="list-style-type: none"><li>1. These General Terms</li><li>2. Collection Statement (<b>Clause 20 of PSP Agreement</b>)</li><li>3. The following clauses from the PSP Agreement:<ul style="list-style-type: none"><li>• Clause 2 (<b>Representations and Covenants</b>)</li><li>• Clause 10 (<b>Sub-merchants</b>)</li><li>• Clause 12 (<b>Creditworthiness of the Cardholder</b>)</li><li>• Clause 14.3, 14.4, 14.6, 14.7 and 14.8 (<b>Refunds</b>)</li><li>• Clause 15 (<b>Disputes, Claims and Dishonours</b>);</li><li>• Clause 16 (<b>Chargebacks</b>)</li><li>• Clause 22.3 and 22.4</li><li>• Clause 24 (<b>Your Obligations to Us</b>)</li><li>• Clause 25 (<b>Definitions</b>)</li></ul></li></ol>

- B. In the event of any inconsistency, these General Terms shall take priority, followed by the Annexures, Supplementary documents and finally the Integrapay Application Form.
- C. Any variation of the PSP Agreement to the extent such terms are incorporated into this agreement shall be void and have no effect unless approved by the Acquirer in writing.
- D. With respect to the acquiring of credit and debit Cards processed via a PSP issued merchant account (**Acquiring Services**) and all rights in relation thereto, references to PSP through this Agreement and in the PSP Agreement shall be taken to include the Acquirer unless explicitly excluded; however, Acquirer's obligations under this Agreement are limited solely to those related to Acquirer's obligations defined by the Network Rules.
- E. PSP itself may provide services in addition to those described in this Agreement under the PSP Agreement, for which it is solely responsible. The Acquirer is not a party to the PSP Agreement.

## GENERAL TERMS

The parties agree as follows:

### 1. ACQUIRING SERVICES.

1.1 **ACQUIRER'S ROLE.** Acquirer is a member of the Networks, permitting the Acquirer to acquire payment transactions. Acquirer sponsors PSP as a Member Service Provider with the Networks and appoints PSP as its agent, allowing PSP to provide a range of payment services relevant to the Acquiring Services.

### 1.2 ADDITIONAL CARD ACQUIRING SERVICES.

**Additional Cards.** The Acquiring Services will not be available to the Company for transactions that are initiated with Cards issued by additional networks (other than those described under clause 1.1) unless otherwise agreed by all parties.

1.3 **NETWORK RULES AND INDUSTRY REGULATIONS.** The Company will comply with all rules, requirements, and standards of each of the Networks (together, **Network Rules**) and any regulations, requirements and standards issued by a governmental authority or industry body (together, **Industry Regulations**). Company acknowledges it has reviewed the payments acceptance guide (**Payment Acceptance Guide**) available on the Acquirer's website [https://www.firstdata.com/en\\_au/customer-center/find-product-support/forms-and-guides.html](https://www.firstdata.com/en_au/customer-center/find-product-support/forms-and-guides.html), which will assist the Company with properly accepting and submitting its transactions for processing. Under Network Rules, the Company does not own the Card account, Cardholder, personal, or other payment transaction information generated when a payment transaction is processed using the Acquiring Services. The Company will not use, retain, disclose, sell, or disseminate any Card or Cardholder information (including, names, addresses, and Card account numbers) obtained in connection with payment transactions except for (1) authorising, processing, and settling transactions; or (2) resolving chargebacks, retrieval requests, or similar issues related to its transaction. The Company will not reproduce electronically captured Cardholder signatures except as requested by PSP or the Networks. A **Cardholder** is the individual who was issued a Card.

1.4 **LOCATIONS.** The Company must be domiciled in Australia as required by applicable Laws and Network Rules in order to submit transactions under this Agreement. PSP will perform the Acquiring Services for payment transactions submitted from all the Company's locations in Australia.

1.5 **SUBMITTING TRANSACTIONS.** The Company is responsible for:

- (a) properly transmitting the transaction data (including all transaction detail required by the Networks) to PSP's systems using the format and specifications provided by PSP. The Company will maintain and update the systems that it uses to accommodate changing Network requirements and Industry Regulations as specified by PSP.;

- (b) all payment transactions submitted for processing under its merchant identification numbers (**MIDs**), including, without limitation, all returns, refunds, or chargebacks, whether charged back by Cardholders or Card issuers;
- (c) preventing its employees and others from submitting returns or refunds that do not reflect valid returns or refunds corresponding to prior transactions; and
- (d) retaining transaction records according to the timelines required by the Network Rules, Industry Regulations or applicable Laws.

1.6 **TRANSACTION ACCEPTANCE.** The Company will only accept and submit transactions where:

- (a) the transaction represents a genuine sale of the Company's goods or services to the Cardholder;
- (b) the transaction is not materially different than the transactions the Company has described to PSP with regard to the products or services sold, the procedures for payments acceptance, or the fulfilment of obligations to the Cardholder;
- (c) the transaction complies with all requirements of the applicable Network Rules and Industry Regulations, the laws of all relevant jurisdictions, and all other requirements of this Agreement;
- (d) the transaction is not a duplicate of any other transaction;
- (e) the transaction is authorised by the rightful Cardholder for the amount of the transaction in satisfaction of the Cardholder's obligation to the Company;
- (f) the transaction is in payment of goods or services provided simultaneously with the payment transaction (except for delayed delivery, advance deposit, or other partial transactions specifically allowed under the Network Rules and Industry Regulations and explicitly authorised by PSP in writing);
- (g) the transaction is not a refinancing of an existing obligation;
- (h) the transaction is valid, collectible, and is not subject to any dispute, setoff, or counterclaim; and
- (i) in the case of a refund, the transaction is submitted to reimburse the Cardholder for a sale transaction that was previously submitted.

1.7 **TRANSACTION RECEIPTS.** The Company will provide PSP a copy of any transaction receipts upon request.

1.8 **SETTLEMENT.**

- (a) The Company acknowledges that for settlement services relevant to credit and debit Cards processed via a PSP issued merchant account, clause 5.3.6 of the PSP Agreement will not apply where the Acquirer is the sponsor and that the following provisions will have effect.
- (b) Acquirer, and not PSP, is responsible for the settlement of Network transactions to the Company. Acquirer will pay the Company for proceeds of transactions submitted and the Company will pay Acquirer all transactions that are charged back by Cardholders, Card issuers, or the Networks and all refunds submitted in connection with the Company's transactions.
- (c) The Company will identify a bank account held in the Company's name (the **Settlement Account**) that Acquirer will use in connection with the Acquiring Services. The Company authorises Acquirer to initiate: (1) credits to the Settlement Account for

proceeds of transactions submitted, and (2) debits to the Settlement Account for any amounts that may be owed or required to be paid to Acquirer under this Agreement. The Company will reimburse Acquirer for the amount of charges incurred as a result of any direct debit being rejected.

- (d) Acquirer will initiate a transfer to the Settlement Account of the value of all valid sales and cash out transactions for the Company's Card payment transactions, less any amounts due from Company for refunds, chargebacks, fees, other debits or monies paid into any Reserve in accordance with clause 6.1. Acquirer will initiate the transfer *in accordance with PSP's standard practices from time to time as agreed with the Acquirer*, but is not responsible for any delays, failures or errors caused by the Networks, the Australian payment system, the Company's financial institution, telecommunications networks or failure or delay in any system of electronically transmitting or receiving information or funds. It will depend on the Company's financial institution when funds will be available in the Settlement Account.
- (e) The Company does not have a property or ownership interest in any proceeds of transactions or funds received by Acquirer/PSP in connection with the Company's transactions (including any funds held in a Reserve in accordance with clause 6.1) until those funds are transferred to the Settlement Account.
- (f) The Company acknowledges that it is subject to continuous due diligence requirements by the PSP and Acquirer and agrees that if the Company is identified on any official sanctions list, including lists maintained by the Australian Department of Foreign Affairs and Trade (DFAT), the United States Office of Foreign Assets Control (OFAC) or the United Nations Security Council (UNSC) sanctions regimes and those maintained by the European Union, or breach clause 8.2, then:
  - (i) neither the PSP or Acquirer will have any obligation to settle any then outstanding transactions to the Company and the proceeds shall be deposited into a Reserve Account;
  - (ii) notwithstanding clause 6.1, the PSP shall not be obligated to pay to the Company any amounts remaining from the Reserve after all other then-current and contingent liabilities or obligations related to the Company's payment transactions have expired unless the Company has obtained necessary compliance clearance, and may otherwise deal with such money as required by Law which the Company agrees shall be deemed to be a payment direction of the Company and will satisfy the Acquirer's/PSP's settlement obligations under this Agreement; and
  - (iii) the Company agrees to indemnify and hold harmless the PSP and Acquire from any claims arising from or related to the non-settlement of such transactions.
- (g) After funds have been deposited into the Settlement Account, Cardholders, Card issuers, and the Networks still have the right to require reimbursement of transactions, to impose obligations relating to violations of the Network Rules, to assess additional interchange or other assessments, and to impose fees, fines, or charges relating to the qualification of transactions and the Settlement Account may be debited in accordance with clause 1.10(b) for these amounts at a later date.
- (h) The Company must promptly notify PSP if it fails to receive any settlement funding or if there are any changes to the Settlement Account. Transfer of settlement funds may be delayed or misdirected if the Company provides inaccurate information about, or fails to notify Acquirer of changes to, the Settlement Account. Acquirer is not responsible for settlement errors that arise if the Company provides inaccurate information about, or fails to notify Acquirer of changes to, the Settlement Account. If the Company has not received any settlement funding in the period agreed with the PSP, the Company shall report such delay to the Acquirer directly.

1.9 **MATCH REPORTING.** Under some circumstances, PSP may be required to report the Company to the Member Alert to Control High Risk (**MATCH**) listing or similar listings maintained by

the Networks. The Company agrees that PSP will not be liable for any losses, damages, or liabilities that may result from that reporting.

#### 1.10 **MARK LICENSE; NETWORK DECALS.**

- (a) Acquirer grants the Company a revocable, royalty free, non-exclusive, limited license that cannot be assigned, transferred, or further sublicensed to use the Networks' trademarks and service marks (together, Protected Marks) in Australia according to the applicable Network Rules. This license does not grant the Company any other intellectual property right, title, interest, or claim (express or implied, by estoppel, or otherwise) to the Protected Marks. The Company will not take any action that impairs an owner's intellectual property rights in its Protected Marks.
- (b) The Company will discontinue use of the Networks' decals, promotional, or other materials after termination of this Agreement. The Company will not indicate that its products or services are endorsed by any of the Networks.

### 2. **FINANCIAL INFORMATION; AUDIT.**

The Company will at all times promptly provide any financial or other information reasonably requested by PSP to perform credit risk, security, qualification, regulatory and Network compliance tasks and other reviews related to the provision of the Services, transactions submitted, fulfilment of obligations to PSP, or Cardholders, or the financial condition of the Company. The Company authorises PSP to obtain information from third parties when performing credit risk, security, qualification, and other reviews and share such information with such of its affiliates or the Acquirer as reasonably necessary in connection with this agreement. PSP may perform a reasonable audit of the Company's records related to its performance under this Agreement with 30 days' advance written notice to the Company, during the Company's normal business hours, and at PSP's expense.

### 3. **NOTICE OF MATERIAL CHANGES; THIRD PARTIES.**

- 3.1 **CHANGE OF CONTROL.** The Company will provide PSP with reasonable advance notice of any material change in the nature of the Company's business as provided for in clause 17 (**Change of Ownership or Operations**) of the PSP Agreement.
- 3.2 **CHANGE OF SYSTEMS.** The Company will also provide PSP with written disclosure identifying the third parties, systems, and services the Company uses to receive, transmit, process, or otherwise manage information or its information technology systems (e.g., without limitation, third party gateways, encryption or firewall providers) related to the transaction information or payment data processed in connection with this Agreement (these third parties must be registered providers with the Networks).

### 4. **THE COMPANY'S PAYMENT OBLIGATIONS.**

- 4.1 **PAYMENT OBLIGATIONS.** The Company will pay PSP as provided for in section 4 (Fees) of the PSP Agreement.

### 5. **RESERVE, SECURITY AND SET-OFF**

- 5.1 **RESERVE.** PSP may require the Company to fund a cash reserve (**Reserve**) in an amount that reflects PSP's assessment of risk, as it may determine in its discretion from time-to-time. The Reserve is a payment obligation of PSP, established by holding back transaction proceeds or debiting the Settlement Account in order to potentially offset any obligations that the Company may have to PSP. The Reserve is not a segregated fund that the Company may claim to own and is not held by PSP on trust for the Company but is held on trust for the Acquirer. Unless expressly provided otherwise, the PSP is obligated to pay to the Company any amounts remaining from the Reserve after all other then-current and contingent liabilities or obligations related to the Company's payment transactions have expired (as provided for under the Network Rules, Industry Regulations or this Agreement).

- (a) The obligations due to the Company from the Reserve will not accrue interest.
- (b) PSP will notify the Company if a Reserve is established (including its amount) or if the amount of the Reserve is modified.
- (c) PSP may set off any obligations that the Company owes to PSP from the Reserve.
- (d) Although the Company acknowledges that the Reserve is a general obligation of PSP, and not a specifically identifiable fund, if any person claims that the Reserve is an asset of the Company that is held by PSP, the Company grants and acknowledges that PSP has a security interest in the Reserve and, at PSP's request, will provide documentation to reflect this security interest and cooperate with PSP to perfect the security interest.

5.2 **SETOFF AND PRIORITY.** All funds that PSP and Acquirer owe to the Company under this Agreement are subject to the Company's payment obligations under this Agreement. PSP or Acquirer may set off the respective amounts the Company owes to PSP or Acquirer against any funds that PSP or Acquirer owe to the Company.

5.3 **SECURITY AND SECURITY INTEREST.** PSP may from time to time request security from the Company or a guarantor to secure performance of the Company's obligations under this Agreement. PSP may determine that this Agreement, a transaction or any security provided creates a security interest for purposes of the Personal Property Securities Act (**PPSA**). The Company will do anything necessary to provide documentation to reflect any security or perfect any security interest.

## 6. STATEMENTS, REPORTING.

PSP will provide the Company with statements or electronic reporting (**Statements**) reflecting the fees, settlement amounts, and other information related to the Services. The Company must review the Statements and inform PSP of any errors within 60 days following the date that the error was, or should have been, reported. The reporting of any errors will enable PSP to recover amounts or prevent the errors from continuing. PSP will have no obligation to provide refunds for errors that the Company reports more than 60 days after it was, or should have been, reported. The Company and PSP will work together to resolve issues or disputes that arise in connection with the Statements, or the funds credited or debited to the Settlement Account.

## 7. REGULATORY REQUIREMENTS

7.1 **AML/CTF ACT.** The Company acknowledges that Acquirer is and will remain subject to supervision by AUSTRAC and the Networks regarding regulatory compliance with the Anti-Money Laundering and Counter-Terrorism Finance Act (2006) (**AML/CTF Act**).

7.2 **REGULATORY REQUIREMENTS.** The Company will comply with the AML/CTF requirements that are put in place by the PSP (**Regulatory Requirements**).

## 8. PRIVACY AND CONFIDENTIAL INFORMATION.

8.1 **PRIVACY.** Each party will comply with, and ensure its third party service providers comply with, the Privacy Act Cth (1988) and will treat personal information collected from individuals in Australia, used, and disclosed in accordance with the Australian Privacy Principles. The Company and PSP shall also comply with the obligations under clause 19.5 of the PSP Agreement.

8.2 **CONFIDENTIALITY.** No party will disclose non-public information about the other party's business (including the terms of this Agreement, technical specifications, customer lists, or information relating to a party's operational, strategic, or financial matters) (together, **Confidential Information**). Confidential Information does not include information that: (1) is or subsequently becomes publicly available (through no fault of the recipient); (2) the recipient lawfully possesses before its disclosure; (3) is independently developed without reliance on the discloser's Confidential Information; or (4) is received from a third party that

is not obligated to keep it confidential. Each party will implement and maintain reasonable safeguards to protect the other party's Confidential Information.

- 8.3 **DISCLOSURE.** The recipient may disclose the other party's Confidential Information: (1) to its directors, officers, personnel, and representatives (including those of its affiliates, subcontractors or vendors) that need to know it in connection with the recipient's performance under this Agreement as well as the purposes set out in the Collection Statement, and are bound by confidentiality obligations materially similar to those required under this Agreement; and (2) in response to a subpoena, court order, request from a regulator, or as required under applicable Laws, Network Rules or Industry Regulations.

## 9. DATA SECURITY.

### 9.1 UNAUTHORISED ACCESS.

- (a) The Company is responsible for any unauthorised access to any transaction data from the Company or from third parties retained by or on behalf of the Company. PSP is responsible for any unauthorised access to the Company's transaction data on PSP's systems.

### 9.2 COMPLIANCE WITH STANDARDS.

- (a) The Company must comply with, Payment Card Industry Data Security Standards (**PCI DSS**) as provided for in clause 23 of the PSP Agreement.
- (b) PSP must comply with all PCI DSS requirements and the Network Rules and Industry Regulations that apply to its performance under this Agreement.

### 9.3 SECURITY INCIDENT.

- (a) If the Company becomes aware that there has been unauthorised access to transaction data (a **Security Incident**), it will promptly notify PSP. If requested by PSP, the Company will retain a reputable firm that is certified and approved by the Networks that provides forensic information security services and risk assessments in order to: (1) assess the nature and scope of the Security Incident; and (2) identify the access controls or transaction data involved in the Security Incident. The Company will take appropriate steps to contain, control, stop, and remediate any Security Incident.
- (b) The Company will provide reasonable details regarding the Security Incident to, and cooperate with, PSP, Acquirer, Networks, governmental authorities or industry bodies and their agents that are involved in the investigation and remediation of a Security Incident. The Company will take all actions that the Networks, governmental authorities, industry bodies, Acquirer or PSP require in connection with the investigation and remediation of a Security Incident.
- (c) The Company will reimburse PSP and/or Acquirer for all fines, fees, penalties, assessments, or other obligations of any kind imposed by a Network on PSP or Acquirer due to a Security Incident caused by the Company or its third party service providers (together, **Network Security Fees**).

- 9.4 **DATA USE.** PSP may use transaction data obtained from providing the Services to the Company to fulfil performance obligations under this Agreement and investigate fraud, or suspected fraud, related to the Company's transactions. Acquirer may use transaction data obtained from providing the Services under this Agreement in aggregated and anonymised form (as required by applicable Laws) for research and development, or to provide services generally.

## 10. TERM, TERMINATION AND SUSPENSION

- 10.1 **TERM.** This Agreement commences:

- (a) by PSP advising you that it has approved your Application and that First Data Merchant Solutions Australia Pty Ltd is your Acquirer; or
- (b) by you:
  - i. commencing to process and Acquiring accepting Transactions; or
  - ii. by PSP issuing an Acquirer issued MID to you.

(the "**Commencement Date**")

and will continue as provided for in clause 18 of the PSP Agreement.

10.2 **GENERAL TERMINATION.** In addition to the rights of termination under clause 18 of the PSP Agreement, the Acquirer may terminate this Agreement at its discretion and for any reason by giving 30 days' advance written notice.

## 11. INDEMNITY AND LIABILITY

11.1 **INDEMNITY.** The Company will indemnify the Acquirer as relevant to the Acquiring Services on the same terms as set out in clause 3 (**Indemnity**) of the PSP Agreement (other than clauses 3.1.16, 3.1.21, 3.2.2, 3.3 which shall not apply) and clause 11. For the avoidance of doubt "other accounts" referred to in clause 3.4 shall include any settlement account or reserve account maintained by the Acquirer relevant to the Acquiring Services.

11.2 **EXCLUSION OF DAMAGES.** Acquirer will not be liable to each other for lost profits, revenues, or business opportunities, expected savings, opportunity costs, loss of goodwill, image or reputation, (whether direct or indirect losses) nor any exemplary, punitive, special, indirect, incidental, or consequential damages under this Agreement; regardless of whether these damages were foreseeable or a party was advised they were possible. Network Security Fees and other amounts for which a party is liable under this Agreement (including, without limitation, amounts imposed by a regulatory authority that are specifically due to a party's failure to perform its obligations under this Agreement) are not excluded by this clause.

11.3 **LIMITATION OF LIABILITY OF COMPANY AND PSP.** The liability of the Company and the PSP as between each other shall be subject to clause 13 (**Liability**) of the PSP Agreement.

11.4 **LIMITATION OF LIABILITY OF ACQUIRER.** The Acquirer shall have no liability to the PSP or Company for losses arising from any cause (regardless of the form of action or legal theory) in connection with this Agreement other than Acquirer's obligation to remit the proceeds of the Company's transactions that are processed under this Agreement (after accounting for all offsetting obligations). In addition, the exclusions under clause 13.2 of the PSP Agreement which shall apply in favour of the Acquirer.

## 12. GENERAL

12.1 **NOTICES.** Written notices (other than normal operations) required under this Agreement will be sent by email, certified mail, or courier (all with tracking and delivery confirmation). Notices will be effective upon receipt.

- (a) Notices to the Company will be sent to:

[insert details]

A notice is valid when sent to the Company's registered address.

- (b) Notices to PSP will be sent to:

[insert details]



(c) Notices to Acquirer will be sent to:

First Data Merchant Solutions Australia Pty Ltd  
Attn: Company Secretary  
Level 11, 168 Walker Street  
North Sydney, NSW 2060  
Emailed notices will be sent to: CompanySecretary.ANZ@firstdata.com

12.2 **PROVIDERS.** Each party is responsible for the performance of any third parties it uses in connection with the Services, and their compliance with the terms of this Agreement.

12.3 **WAIVERS.** A party's waiver of a breach of this agreement will not be considered a waiver of a subsequent breach. A party's delay or failure to exercise any of its rights under this Agreement will not be a waiver of those rights unless otherwise expressly provided for under this Agreement.

12.4 **COMPLIANCE WITH LAW, CHOICE OF LAW.** The parties will comply clause 22.1 of the PSP Agreement.

12.5 **ENTIRE AGREEMENT, AMENDMENT, COUNTERPARTS.** This Agreement is the entire agreement between the parties and replaces any prior agreements or understandings (written or oral) with respect to its subject matter. Amendments, or any other modifications to this Agreement related to Services shall be performed in accordance with clause 22.2 of the PSP Agreement.

**ASSIGNMENT, NOVATION.** The Company may not assign rights under this Agreement or novate this Agreement without the other parties' written consent. PSP may not assign rights under this Agreement or novate this Agreement without the Acquirers written consent. Acquirer may assign, novate or transfer its rights or obligations under this Agreement to another financial or other institution provided that it is a member of the Networks. Acquirer may also substitute or assign, PSP's rights or obligations under this Agreement or a particular Territory Addendum to another financial or other institution provided it is a member of the Networks. The Company agrees (1) to a novation by written notice to the Company where the new contract is on the same terms and conditions as the existing agreement, the new party assumes the rights and obligations of the outgoing party and the outgoing party is released from those rights and obligations, and (2) to enter into such documents as Acquirer may reasonably require in order to effect such assignment, novation or transfer. This Agreement will be enforceable against a party's permitted successors or assigns.

12.6 **FORCE MAJEURE.** Clause 21 of the PSP Agreement shall apply.