



# Merchant Facility Application

Before we can offer you a merchant facility, Pocket Pay app, MT330 terminal and access to the Quest Cloud Eftpos processing service, we need to understand your business. Please answer the following questions and provide additional supporting documentation as required to justify statements made by you. We may, at our discretion, require a detailed business plan to gain a better understanding of your business.

## 1. Key Customer Details

Customer Name: \_\_\_\_\_

Business Contact Phone Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

## 2. Business Details

Full business/customer name: \_\_\_\_\_ ACN: \_\_\_\_\_

Trading Name: \_\_\_\_\_ ABN: \_\_\_\_\_

Trading Address: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

Business Start Date: \_\_\_\_\_ Type of Business: Please Select \_\_\_\_\_ Industry: \_\_\_\_\_

Product/Services Provided: \_\_\_\_\_

Business Location:    Home                      Office                      Shopfront                      Warehouse                      Mobile                      Website

Do you take payment in advance?    Yes                      No                      If so, how long? \_\_\_\_\_

Annual Sales/Turnover: \$ \_\_\_\_\_ Estimated Average Sale Price: \$ \_\_\_\_\_ Percentage of Sales by Merchant Facility: \_\_\_\_\_ %

## 3. Director/Proprietor/Sole Trader details

### Director/Proprietor/Sole Trader 1

Mr / Mrs / Ms \_\_\_\_\_ Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Residential Address: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Driver's License Number: \_\_\_\_\_

Have you ever been declared bankrupt?

No                      Yes - date bankruptcy discharge \_\_\_\_\_                      Is a copy of the discharge attached?    Yes                      No

### Director/Proprietor/Sole Trader 2

Mr / Mrs / Ms \_\_\_\_\_ Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Residential Address: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Driver's License Number: \_\_\_\_\_

Have you ever been declared bankrupt?

No                      Yes - date bankruptcy discharge \_\_\_\_\_                      Is a copy of the discharge attached?    Yes                      No

If there are more than two proprietors, please complete this section on another form to record additional details. If the proprietor is a company, please record corporate details and complete an additional form(s) to record the details of each director.

#### 4. MT330 Requirements

Number of MT330 terminals **without** Contactless required: \_\_\_\_\_ Number of MT330 terminals **with** Contactless required: \_\_\_\_\_

Your device type to use with MT330:	iPhone 4S or later	iPad mini / iPad 3 or later	iPod touch 5 <sup>th</sup> gen or later
	Android Tablet (specify type):		
	Android Smartphone: (specify type):		
	Windows Smartphone: (specify type):		
	Other: (specify type):		

#### 5. MT330 Configuration Options

Should you wish MT330 devices to accept charge cards including American Express, JCB and Diners Club, please provide your merchant numbers below. You MUST obtain the charge card Merchant Numbers directly from these organisations.

American Express Merchant Number: \_\_\_\_\_

JCB Merchant Number: \_\_\_\_\_

Diners Club Merchant Number: \_\_\_\_\_

Tipping Required:  If selected, MT330 will prompt for cardholder entry of a tip amount in addition to the transaction amount.

Surcharging Required (indicate rate):	Debit \$	Visa/MasterCard %	Amex %	Diners %	JCB %
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Note: Merchant imposed surcharge rates should reflect only the reasonable cost of card acceptance. Limits apply.

#### 6. Site Data Security

Have you ever had information stolen from your computer?	Yes	No	
Do you take Credit Card sales from the Internet?	Yes	No	
Do you have another party that takes transactions on your behalf?	Yes	No	<input type="text"/> If yes, who?
Do you store Card Holder information? Eg Card Numbers	Yes	No	

#### 7. Nominated Account for Settlement and Direct Debit of Fees

I/We authorise Bendigo Bank to process **settlement** values to our Bank Account Number, on receipt of the nominated Merchant facility:

<input type="text"/>	<input type="text"/>	<input type="text"/>
(Insert BSB Number)	(Insert Account Number)	(Account Name)

I/We authorise Bendigo Bank to debit **fees** to our Bank Account Number, on receipt of the nominated Merchant facility:

<input type="text"/>	<input type="text"/>	<input type="text"/>
(Insert BSB Number)	(Insert Account Number)	(Account Name)

I/We acknowledge that should I/we intend to vary these *account* details, not less than 14 days written notice *must* be given to the Bank.

Settlement occurs automatically each day at Midnight (EST).

I/We request and authorize Bendigo and Adelaide Bank Ltd – Merchant Fees (165199) to arrange a debit to the nominated fee *account* any amount deemed payable by me/us in relation to this application and related ongoing service.

## 8. Schedule A Merchant Agreement

This agreement made on the [ ] day of [ ] year [ ]

### BETWEEN:

The Merchant '(you)': \_\_\_\_\_  
Registered Business Address: \_\_\_\_\_  
A.C.N (If company): \_\_\_\_\_ A.B.N: \_\_\_\_\_  
Trading Name: \_\_\_\_\_  
Trading Address: \_\_\_\_\_

### AND:

- A. Bendigo and Adelaide Bank Limited A.B.N. 11 068 049 178, Fountain Court, Bendigo Victoria 3550; and**  
**B. Quest Payment Systems Pty Ltd A.B.N. 19 100 042 475 trading as Quest Merchant Services, 227 Burwood Road, Hawthorn Victoria 3122 (separately or collectively 'we' or 'us')**

### Transaction Methods Authorised are:

MT330

### Cards Authorised for Acceptance are:

MasterCard  Visa  Debit Cards

## AGREED FEES TO BE PAID BY YOU

1. Merchant Joining Fee	\$0.00	Waived
2. Monthly Service Fee – without Contactless Reader	\$23.00	Per terminal
3. Monthly Service Fee – with Contactless Reader	\$28.00	Per terminal
4. Credit Card Merchant Service Fee	@ 1.82%	Per transaction
5. Debit Card Fee	\$0.28	Per transaction

## THESE FEES MAY ALSO APPLY

6. Merchant Statements Re-print	\$5.00	Per statement
7. Chargeback Fee	\$20.00	Per chargeback
8. Upgrade Fee (from standard MT330 to MT330 with Contactless)	\$65.00	Per terminal once off
9. Non Return Fee (where a device has not been returned)	\$479.00	Per terminal without Contactless
	\$578.00	Per terminal with Contactless
10. Repair Fee (where device is damaged but can be repaired)	\$140.00	Per terminal
11. Replacement Fee (where device is damaged beyond repair)	\$479.00	Per terminal without Contactless
	\$578.00	Per terminal with Contactless
12. Early Termination Fee (within Minimum Contract Term)	\$160.00	1 year term per terminal
13. Closure Fee (outside Minimum Contract Term)	\$95.00	
14. MT330 Charge Dock	\$35.00	Per Dock plus freight

All fees and charges listed on this Schedule are quoted GST exclusive and are debited from your nominated account.

## LIMITS

### The following limited apply to this facility:

Refund Transaction Limit	\$300 per transaction
Refund Daily Limit	\$1,000 per terminal per day
Online Daily Limit	\$10,000 per terminal per day
Offline Daily Limit	\$1,000 per terminal per day

## DECLARATION AND AUTHORITY TO US

### 1. Collection and use of your information

We, Bendigo and Adelaide Bank Limited, collect personal information and credit-related personal information about you for the purposes of assessing your application for, and providing you with, a Merchant Facility and related services. Collection of some of this information is required by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*. If you provide incomplete or incorrect information we may be unable to provide you with merchant facility services.

We may obtain from any person who is involved in any card scheme (e.g. AMEX, MasterCard, Visa), Credit Reporting Bodies (as defined below), merchant alert agencies, and other credit providers and financial institutions, information about your merchant history, personal information, credit-related personal information and commercial credit information including information relating to previous Merchant Facilities.

We may also use your personal information and credit-related personal information to perform our business functions (for example internal audit, operational risk, product development and planning).

### 2. Collection of information about third parties

We may need to collect personal information and credit-related personal information about a third party from you as part of this application. If we do this, you agree you will advise that person that we have collected their information, and that in most cases they can access and seek correction of the information we hold about them.

### 3. Disclosure of your information

We treat your information as confidential and only disclose it to others where necessary. We usually disclose your personal information and credit related personal information to organisations that carry out functions on the Bank's behalf such as mailing and printing houses, electronic network administrators, Credit Reporting Bodies, merchant alert agencies, information technology providers, terminal installation and maintenance technicians (including EFTPOS), intermediaries and other financial institutions that process your transactions. Your information may also be disclosed to our related entities, our joint venture partners and Community Bank® companies where its confidentiality is maintained at all times.

We may disclose personal information, credit-related personal information, commercial credit information and information about your merchant history to any person who is involved in any card scheme. This information can be disclosed for any purpose in relation to the operation of those schemes, and where the law requires or permits the Bank to do so.

We may also disclose to any card scheme advice of the termination of the Merchant Agreement and the reasons for termination of the Agreement. You acknowledge that the information concerning termination of the Agreement then becomes available to any member of the card schemes. This information may be used in assessing subsequent applications for merchant facilities.

We may also disclose your personal information, credit-related personal information, commercial credit information, and information about your merchant history (including advice of a termination of a merchant agreement with us) to other credit providers, merchant alert agencies, Credit Reporting Bodies, and government authorities.

### 4. Disclosure of your information to overseas organisations

Some of the organisations we disclose your personal information and credit-related personal information to may be located overseas. Where an organisation is located overseas we will either take reasonable steps to ensure that it complies with Australian privacy laws or we will seek your consent to the disclosure.

### 5. Access and Correction of your information

In most cases you can gain access to and seek correction of your personal information and credit-related personal information. Should you wish to do so, or if you have any queries about your information, please contact us on 1300 361 911.

### 6. Direct Marketing

We may use your personal information and credit-related personal information to inform you about financial products and services that are related to those you have with us or other products and services we think you may be interested in. These may be products and services provided by us, our related entities or other entities we are associated with. If you do not wish to receive any marketing material from us please contact us on 1300 361 911.

### 7. Credit Reporting Bodies

In this privacy disclosure statement, the "Credit Reporting Body" means each of the following organisations (whether acting individually or together):

Veda Advantage Public Access Division  
PO Box 964  
North Sydney NSW 2059

Public Enquiries: 1300 762 207  
Website: [www.mycreditfile.com.au](http://www.mycreditfile.com.au)

Dun & Bradstreet Australia  
PO Box 7405  
St. Kilda Road  
Melbourne VIC 3004  
Public Enquiries: 1300 734 806  
Website: [www.checkyourcredit.com.au](http://www.checkyourcredit.com.au)

Where you are applying for credit, we may give to a Credit Reporting Body personal information and credit-related personal information. The Credit Reporting Body may include the information given by us in reports provided to other credit providers to assist them to assess your credit worthiness. The Credit Reporting Body has a policy for managing your credit information that you may access by contacting them.  
In some cases a Credit Reporting Body may use your information for pre-screening your eligibility to receive direct marketing from us or other credit providers. If you do not want a Credit Reporting Body to do this contact the Credit Reporting Body.

Where you believe on reasonable grounds that you have been or are likely to be a victim of fraud you may request a Credit Reporting Body not to use or disclose your information.

### 8. Privacy Policy and Credit Reporting Policy

You should also read our Privacy Policy and Credit Reporting Policy.

Our Privacy Policy contains information about:

- a. how you can access and seek correction of your personal information;
- b. how you can complain about a breach of the privacy laws by us and how we will deal with a complaint;
- c. if we will disclose personal information to overseas entities, and where practicable, which countries those recipients are located in.

Our Privacy Policy is available on our website [www.bendigobank.com.au](http://www.bendigobank.com.au) or by telephoning 1300 361 911.

Our Credit Reporting Policy contains information about:

- a. how you can access and seek correction of your credit eligibility information;
- b. how you can seek correction of your credit information;
- c. how you can complain about a breach of the credit reporting laws by us and how we will deal with a complaint;

### Authorisation to conduct Merchant check

I/We authorise Bendigo Bank, as part of the assessment process, to conduct Merchant credit checks with the organisations responsible for carrying out such services.

### Declaration

If my/our Merchant facility involves the operation of a Web Site, I/We acknowledge that we are familiar with the Industry Best Practices of Websites and will bear all responsibility in relation to any actions or claims for a website that does not comply with Industry Best Practice.

I/We certify that I/we are authorized signatories for the entity applying for this facility.

I/We certify that the foregoing information statements are true and complete to the best of my/our knowledge. I/We acknowledge that upon signing this application I/we agree to abide by both the **Bendigo Merchant Terms and Conditions** and the **Quest Merchant Services Terms and Conditions**, and accept full responsibility for the transactions conducted on my/our accounts by me/us.

### ACCEPTANCE

Signed by the Merchant:	Date:
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Name and Designation: (Director/Partner/Sole Proprietor/Duly Authorised Officer/Company Secretary/Sole Director and Sole Secretary)
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Signed by the Merchant:	Date:
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Name and Designation: (Director/Partner/Sole Proprietor/Duly Authorised Officer/Company Secretary/Sole Director and Sole Secretary)
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### Signed for and on behalf of Bendigo Bank

Bank Officer's:

Signature

Name

ADM

Date of Agreement: / /

Date of Signing: / /

Company Name: Bendigo & Adelaide Bank Ltd  
Address P O Box 480, Bendigo 3550  
Contact Details: 1300 BENDIGO (236 344)

## Direct Debit Request Service Agreement

This is your Direct Debit Service Agreement with Bendigo & Adelaide Bank Ltd, ABN 11 066 049 178 AFSL No 237879 User ID No 165199. It explains what your obligations are when undertaking a Direct Debit arrangement with **us**. It also details what our obligations are to **you** as your Direct Debit provider.

Please keep this **agreement** for future reference. It forms part of the terms and conditions of your **Direct Debit Request (DDR)** and should be read in conjunction with your DDR authorisation.

### Definitions

**account** means the **account** held at **your financial institution** from which we are authorised to arrange for funds to be debited.

**agreement** means this **Direct Debit Request Service Agreement** between **you** and **us**.

**banking day** means a day other than a Saturday or a Sunday or a public holiday listed throughout Australia.

**debit day** means the day that payment by **you** to **us** is due.

**debit payment** means a particular transaction where a debit is made.

**direct debit request** means the **Direct Debit Request** between **us** and **you**.

**us or we** means **Bendigo & Adelaide Bank Ltd** (the Debit User) **you** have authorised by requesting a **Direct Debit Request**.

**you** means the **customer** who has signed or authorised by other means the **Direct Debit Request**.

**your financial institution** means the financial institution nominated by **you** on the DDR at which the **account** is maintained.

### 1. Debiting your account

1.1 By signing a **Direct Debit Request** or by providing **us** with a valid instruction, **you** have authorised **us** to arrange for funds to be debited from your **account**. **You** should refer to the **Direct Debit Request** and this **agreement** for the terms of the arrangement between **us** and **you**.

1.2 **We** will only arrange for funds to be debited from your **account** as authorised in the **Direct Debit Request** or **We** will only arrange for funds to be debited from your **account** if **we** have sent to the address nominated by **you** in the **Direct Debit Request**, a billing advice which specifies the amount payable by **you** to **us** and when it is due.

1.3 If the **debit day** falls on a day that is not a **banking day**, **we** may direct **your financial institution** to debit your **account** on the following **banking day**. If **you** are unsure about which day your **account** has or will be debited **you** should ask **your financial institution**.

### 2. Amendments by us

2.1 **We** may vary any details of this **agreement** or a **Direct Debit Request** at anytime by giving **you** at least fourteen (14) days written notice.

### 3. Amendments by you

**You** may change, stop or defer a **debit payment**, or terminate this **agreement** by providing **us** with at least 14 days notification by writing to: **Bendigo & Adelaide Bank Ltd, P O Box 480, Bendigo 3550**

or

by telephoning **us** on 1300 BENDIGO (236 344) during business hours;

or

arranging it through your own financial institution, which is required to act promptly on your instructions.

### 4. Your obligations

It is your responsibility to ensure that there are sufficient clear funds available in your **account** to allow **debit payment** to be made in accordance with the **Direct Debit Request**.

4.2 If there are insufficient clear funds in your **account** to meet a **debit payment**:

(a) **you** may be charged a fee and/or interest by **your financial institution**;

(b) **you** may also incur fees or charges imposed or incurred by **us**; and

(c) **you** must arrange for the **debit payment** to be made by another method or arrange for sufficient clear funds to be in your **account** by an agreed time so that **we** can process the **debit payment**.

4.3 **You** should check your **account** statement to verify that the amounts debited from your **account** are correct.

### 5. Dispute

5.1 If **you** believe that there has been an error in debiting your **account**, **you** should notify **us** directly **Bendigo & Adelaide Bank Ltd, PO Box 480, Bendigo 3550** or phone **1300 BENDIGO (236 344)** and confirm that notice in writing with **us** as soon as possible so that we can resolve your query more quickly. Alternatively **you** can take it up directly with **your financial institution**.

5.2 If **we** conclude as a result of our investigations that your **account** has been incorrectly debited we will respond to your query by arranging for **your financial institution** to adjust your **account** (including interest and charges) accordingly. **We** will also notify **you** in writing of the amount by which your **account** has been adjusted.

5.3 If **we** conclude as a result of our investigations that your **account** has not been incorrectly debited **we** will respond to your query by providing **you** with reasons and any evidence for this finding in writing.

## **6. Accounts**

**You** should check:

- (a) with **your financial institution** whether direct debiting is available from your **account** as direct debiting is not available on all accounts offered by financial institutions.
- (b) your **account** details which **you** have provided to **us** are correct by checking them against a recent **account** statement; and
- (c) with **your financial institution** before completing the **Direct Debit Request** if **you** have any queries about how to complete the **Direct Debit Request**.

## **7. Confidentiality**

7.1 **We** will keep any information (including your **account** details) in your **Direct Debit Request** confidential. **We** will make reasonable efforts to keep any such information that **we** have about **you** secure and to ensure that any of our employees or agents who have access to information about **you** do not make any unauthorised use, modification, reproduction or disclosure of that information.

7.2 **We** will only disclose information that **we** have about **you**:

- (a) to the extent specifically required by law; or
- (b) for the purposes of this **agreement** (including disclosing information in connection with any query or claim).

## **8. Notice**

8.1 If **you** wish to notify **us** in writing about anything relating to this **agreement you** should write **Bendigo & Adelaide Bank Ltd, PO Box 480, Bendigo 3550**.

8.2 **We** will notify **you** by sending a notice in the ordinary post to the address **you** have given **us** in the **Direct Debit Request**.

8.3 Any notice will be deemed to have been received on the third **banking day** after posting.



# Terms & Conditions





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## 1. Definitions

1.1 In this agreement, unless inconsistent with the context:

- a) **Bendigo Bank** means Bendigo and Adelaide Bank Limited, the financial institution that processes card transactions on **Your** behalf;
- b) **Bendigo Bank Merchant Terms & Conditions** means the terms and conditions imposed by **Bendigo Bank** for provision of facilities to accept card transactions;
- c) **Cloud Eftpos** means the internet based transaction processing service provided by **Quest Merchant Services** enabling MT330 payment terminals to conduct transactions with **Bendigo Bank**;
- d) **Equipment or Goods** means the whole or part of any **Equipment** supplied by **Us** to enable **Us** to provide the **Services**, including the MT330 payment terminal and AP2 Contactless Reader;
- e) **Fees** means any **Fees** payable in relation to provision of **Services** and **Merchant Services** as detailed in Schedule A Merchant Agreement in the **Merchant Facility Application**, or as advised from time to time;
- f) **Merchant Account** means the merchant account **You** hold with **Bendigo Bank**;
- g) **Merchant Facility Application** means **Your** application for provision of both **Merchant Services** and **Services**.
- h) **Merchant Services** means the transaction processing and acquiring service provided by **Bendigo Bank**;
- i) **Minimum Contract Term** means the period specified in Schedule A Merchant Agreement in the **Merchant Facility Application**;
- j) **Personnel** means **Your** employees, agents, advisers, auditors, consultants or contractors;
- k) **Quest Merchant Services** means Quest Payment Systems Pty Ltd, the provider of **Equipment, Services** and **Support Services**;
- l) **Quest Merchant Services Terms & Conditions** means this agreement;
- m) **Services** means the provision of software, **Services**, documents and **Cloud Eftpos** service enabling **You** to conduct card transactions with **Bendigo Bank**;
- n) **Support Services** means the maintenance and **Support Services** relating to the **Equipment** and **Services**, as advised by **Us** from time to time;
- o) **We, Our** or **Us** means Quest Payment Systems Pty Ltd trading as **Quest Merchant Services** and its successors and assigns; and
- p) **You** or **Your** means jointly and severally any person nominated on the **Merchant Facility Application** as a customer.

## 2. Interpretation

2.1 In this agreement, unless inconsistent with the context:

- a) words denoting a person shall include corporations, statutory corporations, partnerships, joint ventures, associations, boards, governments or semi-government agencies or authorities;
- b) words denoting the singular number shall include the plural number and vice versa;
- c) words denoting any gender shall include all other genders;
- d) a reference to a statute or a regulation also refers to any statute or regulation amending, or consolidating or re-enacting same;
- e) money references are references to Australian currency;
- f) headings used in this agreement are for convenience and ease of reference only, and are not part of this agreement and shall not be relevant or affect the meaning or interpretation of this agreement;
- g) every obligation, covenant, agreement, condition express or implied in this agreement and entered into by more than one Party shall bind them jointly and each of them severally;
- h) a provision of this agreement shall not be construed adversely to the Party that drafted it; and
- i) if any provision or part provision of this agreement is held invalid, unenforceable or illegal for any reason, this agreement shall remain otherwise in full force apart from such provision or part provision which shall be deemed deleted.

### 3. Our obligations

**We** shall supply the **Equipment, Services, Support Services** and **Cloud Eftpos** service to enable **You** to conduct card payment transactions.

### 4. Your obligations

#### 4.1 **You** shall:

- a) pay all applicable **Fees** with respect to the **Services**;
- b) follow **Our** instructions with respect to the use of the **Equipment**;
- c) take care of the **Equipment** and follow all **Our** directions for its maintenance and protection;
- d) not alter the **Equipment** in any manner;
- e) ensure **Your** premises or operating locations enable a cardholder to shield from observation, video surveillance or reflection the entry of any information for the transaction;
- f) pay for any repairs to, or replacement of, **Equipment** which are necessary because of **Your** neglect or misuse. **We** may choose whether **You** should repair or replace the **Equipment**;
- g) return any faulty **Equipment** to **Us** within five (5) business days of receiving replacement **Equipment** from **Us**;
- h) not allow any person except **Our** employees, contractors or agents to service or repair the **Equipment**;
- i) notify **Us** immediately if any **Equipment** is stolen, damaged or interfered with in any way;
- j) not permit use of or access to **Cloud Eftpos** other than for transactions **You** reasonably believe are legitimate;
- k) not permit use of or access to **Cloud Eftpos** by any person or company other than as contemplated by this agreement; and
- l) return all rental **Equipment** to **Us** upon closure or termination of **Your** merchant facility.

### 5. Title and Security Interest – Rental Equipment

- 5.1 **We** retain all rights and title in the **Equipment**. All related **Equipment** and **Software** supplied by **Us** remains our property.
- 5.2 **You** acknowledge that this agreement creates a security interest, as that term is defined in the *Personal Property Securities Act 2009 (PPS Act)*, in favour of **Us** in the **Equipment**.
- 5.3 **You** acknowledge that **We** may register **Our** security interest that arises under this agreement, being a purchase money security interest, on the Personal Property Securities Register, established under the PPS Act, at any time without requesting **Your** consent or providing **You** with notice of any kind.
- 5.4 **You** acknowledge and agree to waive **Your** following rights under the PPS Act:
  - a) to receive any notices or statement under sections 95, 130, 132(3)(d), 132(4) and 135;
  - b) to redeem property under section 142; and
  - c) to reinstate any agreement between **You** and **Us** under section 143.

### 6. Intellectual Property

- 6.1 **You** acknowledge and agree that all intellectual property rights in the **Equipment** and **Services** provided to **You** under this agreement is owned by **Us**.
- 6.2 **We** grant **You** a non-exclusive, non-transferable licence to use **Our** intellectual property for the sole purpose of **Your** use of the **Equipment, Services** and **Support Services** for the duration of this agreement.

## 7. Risk

- 7.1 **You** are responsible for any loss or damage to the **Equipment**. If the **Equipment** is lost or damaged, **You** must pay **Us** the full cost of replacing or repairing that **Equipment** as detailed in the **Merchant Facility Application**, including any freight costs associated with the repair or replacement. Loss or damage to the **Equipment** includes, but is not limited to, damage due to malicious acts, accidental damage, spillage of liquids, flood, fire and electrical surges. **We** will determine whether the **Equipment** can be repaired or whether **You** must pay the cost of replacing the **Equipment**.

## 8. Fees, costs and other payments

- 8.1 **You** agree that any applicable **Fees** relating to **Equipment** and **Services** which are provided by **Quest Merchant Services** under this agreement will be debited by **Bendigo Bank** to **Your** nominated account, and remitted to **Quest Merchant Services** on your behalf.
- 8.2 **Fees** for **Equipment** and **Services** are not refundable (whether in whole or part).
- 8.3 **You** acknowledge that if **We** replace **Equipment** for **You**, and **You** do not return the original **Equipment** to **Us** within five (5) business days, or **You** do not return **Equipment** to **Us** following termination or cancellation, **You** will be charged a non-return fee.
- 8.4 If **You** default in any payment:
- We** may suspend or cancel the **Services** or any other service provided by **Us**; and
  - We** may charge additional **Fees** to resume the **Services**; and
  - You** will pay all collection costs and the legal fees reasonably incurred by **Us** as a result of any default.
- 8.5 Where applicable, **We** may be entitled to receive a commission relating to **Your** use of a **Bendigo Bank Merchant Account**.
- 8.6 **You** acknowledge that the use of mobile **Equipment** may incur charges from **Your** mobile service provider including data and/or SMS/MMS **Services**. Any such charges are **Your** sole responsibility and any matters regarding these charges should be raised with **Your** mobile service provider.

## 9. Limited Warranty

- 9.1 **We** shall supply the **Services** with all due care and skill.
- 9.2 **We** shall re-supply any **Services** which are not supplied in accordance with Sub-clause 9.1 provided that **You** notify **Us** of same within a reasonable time of the supply of the **Services**. This remedy shall be **Your** sole remedy for breach of this agreement or any other cause of action against **Us**.

## 10. Exclusions and Limited Warranty

- 10.1 To the maximum extent permitted by law and except as expressly provided to the contrary in this agreement, all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of this agreement or to this agreement generally, are excluded. Where legislation implies into this agreement any condition or warranty and that legislation avoids or prohibits provisions in a contract from excluding or modifying the application or exercise of, or liability under, such term shall be deemed to be included in this agreement.

- 10.2 **Our** liability for any breach of such term shall be limited, at **Our** option, to any one or more of the following:
- a) If the breach related to **Equipment or Goods**:
    - i. the replacement of the **Equipment or Goods**;
    - ii. the repair of such **Equipment or Goods**;
    - iii. the payment of the cost of replacing the **Equipment or Goods** or of acquiring equivalent **Equipment or Goods**;
    - iv. or the payment of the cost of having the **Equipment or Goods** repaired;
  - b) if the breach relates to **Services**:
    - i. the supplying of the **Services** again; and
    - ii. the payment of the cost of having the **Services** supplied again.
- 10.3 To the extent permitted by law and except as expressly provided to the contrary in this agreement, **We** shall not be under any liability (contractual, tortious or otherwise) to **You** in respect of any loss or damage (including, without limitation, consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect to the supply of **Equipment or Goods** or **Services** pursuant to this agreement or **Our** act, failure or omission.
- 10.4 Without limiting any other provision of this agreement, **You** also acknowledge that:
- a) performance of the **Cloud Eftpos** service is dependent on a number of factors outside **Our** control, including traffic on and technical difficulties with the internet, **Bendigo Bank** communications links and the performance of the banking system;
  - b) the **Cloud Eftpos** service is secure within certain technical boundaries which **You** have considered;
  - c) payment and payment clearance operates on the terms and conditions dictated by **Bendigo Bank**;
  - d) there may be interruption or failure of the **Cloud Eftpos** service; and
  - e) **We** shall not be obliged to put in place any substitute or alternative **Services** should there be a failure of or delay in the provision of the **Cloud Eftpos** service.

## 11. Indemnity

- 11.1 To the maximum extent permitted by law, **You** shall fully indemnify and keep indemnified **Us**, **Our** officers, employees and agents, against any loss, costs, expenses, demands, taxes or liability whether direct or indirect arising out of a breach of this agreement by **You** or **Your** wilful, unlawful or negligent act or omission. To the extent required, **We** hold the benefit of this indemnity on trust for **Our** officers, employees and agents.

## 12. Term and Termination

- 12.1 Unless terminated earlier, this agreement is for a **Minimum Contract Term** as detailed in Schedule A Merchant Agreement of the **Merchant Facility Application**.
- 12.2 **You** acknowledge that if **You** terminate this agreement prior to expiration of the **Minimum Contract Term** as defined in Schedule A Merchant Agreement of the **Merchant Facility Application**, an early termination fee may apply.
- 12.3 Without limiting any other clause in this agreement, **We** may terminate this agreement in whole or in part immediately on notice in writing to **You** if:
- a) any payment due from **You** pursuant to this agreement remains unpaid for a period of 14 days;
  - b) **You** breach this agreement and such breach is not remedied within 14 days of written notice by **Us**;
  - c) **You** become, threaten or resolve to wind up or are in jeopardy of becoming subject to any form of insolvency administration;
  - d) **You** being a partnership, dissolve, threaten or resolve to dissolve or is in jeopardy of dissolving;
  - e) **You** being a natural person, become bankrupt or die;
  - f) **You** cease or threaten to cease conducting **Your** business in the normal manner; or
  - g) **You** breach the terms and conditions of Your Acquiring Bank's Merchant Agreement.
- 12.4 If **We** terminate this agreement pursuant to clause 12.3:
- a) **We** may retain any monies paid;
  - b) **We** may, and **You** authorise **Us** to, enter **Your** premises to repossess the **Equipment**;
  - c) **We** may charge a reasonable sum for work performed in respect of which work no sum has been previously charged and charge a **Fee** until the **Equipment** is returned to **Us**;
  - d) **You** will immediately discharge **Us** from any further obligations under this agreement; and
  - e) **We** may pursue any additional or alternative remedies provided by law.

## 13. Force Majeure

13.1 **We** shall not be liable for any delay or failure to perform **Our** obligations if such a failure or delay is due to force majeure.

## 14. Waiver

14.1 A single or partial exercise or waiver of a right relating to this agreement does not prevent any other exercise of that right or the exercise of any other right.

14.2 No right of **Ours** under this agreement shall be deemed to be waived except by notice in writing signed by **Us**. Such a waiver by **Us** shall not prejudice its rights in respect of any subsequent breach of this agreement by **You**.

14.3 Any express statement of a right of **Ours** under this agreement is without prejudice to any other right **We** may have.

14.4 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

## 15. Governing Law

15.1 This agreement shall be governed by and construed according to the law of the State of Victoria.

15.2 The Parties irrevocably submit to the exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia and any courts hearing appeals from such Courts. Any proceedings in a Commonwealth court shall be commenced in Victoria.

## 16. Variation

16.1 Quest reserves the right to vary the terms and conditions outlined in this agreement.

## 17. Notices

17.1 Notices under this agreement may be delivered by hand, by mail or by facsimile to the addresses as advised by **Us**.

17.2 Notices shall be deemed given in the case of:

- a) hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party;
- b) posting, 3 days after dispatch; and
- c) facsimile, upon completion of transmission.