

# AUS Terms and Conditions 2024

## 1. Parties

These terms and conditions will govern the Agreement entered into between the Client (“You”, “Your”) and Reward Gateway Pty Ltd ACN 141 363 564 (“We”, “Us”, “Our”) (together the “Parties”) for the provision of Services. Together these terms and conditions and the Client Agreement represent the entire and only agreement between You and Us.

## 2. Definitions

**Annual Fee:** as described in the Client Agreement.

**Applicable Laws:** all applicable laws, statutes, regulations and codes from time to time in force.

**Client Success Manager:** A dedicated manager provided to You to derive maximum value from the Services.

**Client Marks:** the trademarks, service marks, trade names, logos and other commercial and product designations of Client identified by You for use on the Platform.

**Contract Date:** the date that the Client Agreement is executed by the last Party to sign.

**Confidential Information:** all information relating to a Party's business products and services (including operations, plans, market opportunities, customers, suppliers, know-how (including designs, processes of production and technology), trade secrets and software) and/or any Personal Data disclosed to the other Party (whether by or on the behalf of the other Party) whether in writing, orally or by any other medium.

**Contract Year:** the period of 12 months beginning on the Service Start Date and each subsequent period of 12 months thereafter beginning on each anniversary of the Service Start Date.

**Data Protection Laws** means: (i) the privacy, security, and data protection laws, rules, and regulations of any jurisdiction which apply to the collection, storage, use or disclosure of Personal Data in connection with this Agreement; and (ii) the applicable privacy policies of either party as well as policies and guidelines applicable to any of the foregoing provided by one party to the other in written form from time to time.

**Employees:** means Your employees or members who are granted access to the Platform and the Services pursuant to this Agreement.

**Employee Terms:** means the agreement entered into between Us and the Employees which sets out the terms and conditions upon which We permit Employees to access and use the Platform and the Services.

**Force Majeure:** in relation to either Party, any circumstance beyond the reasonable control of that Party including any act of God, war, riot, explosion, abnormal, unusual or extreme weather conditions, loss of utilities, fire, flood, failure or breakdown of telecommunications systems or network infrastructure, malicious network attacks, strike, lock out or industrial dispute, fuel shortages and/or governmental or regulatory authority action.

**Implementation Fee:** as described in the Client Agreement.

**Launch Date:** the date on which You make the Platform available to Your Employees.

**Minimum Term:** the period described in the Client Agreement, commencing on the Service Start Date.

**Personal Data:** any personal data or information relating to an identified or identifiable person (as defined in a Data Protection Law) and includes Personal Data that is processed from time to time by Us or You in connection with the provision or use of the Services. For the purposes of Data Protection Laws as they apply in Australia, Personal Data includes information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information is true or not and whether the information or opinion is recorded in material form or not.

**Privacy Policy:** means the Reward Gateway privacy policy which is available at <http://www.rewardgateway.com/au/privacy-policy>

**Renewal Date:** the last day of the Minimum Term or any Renewal Term.

**Renewal Term:** as defined in Clause 8.

**Retail Partners:** businesses whose goods, services, Instant Vouchers and in-store SMS texts appear on the Platform.

**Reward Gateway Pty Ltd:** employee engagement company operating the Reward Gateway employee engagement platform (the “Platform”) and registered at Suite 13.01, Level 13, Australia Square Plaza, 95 Pitt Street, Sydney 2000 Australia

**Services:** means the products and services that are ordered by You, as described in the Client Agreement.

**Service Start Date:** the earlier of (i) the Launch Date and (ii) the date falling three months after the Contract Date.

**Working Day:** Monday to Friday, save for any day which is a public holiday in New South Wales.

### 3. Our Obligations

**3.1.** Subject to Clause 3.2, we will provide the Services with reasonable skill and care and in accordance with this agreement and applicable laws and regulations.

**3.2.** You acknowledge that receipt of any Services provided by Retail Partners may be subject to You and/or the Employee accepting the Retail Partner's terms. We shall not be liable for any breach of such terms by the Retail Partner or for any failure or delay to provide the Services due to Your or Your Employees' failure to accept the Retail Partner's terms.

**3.3.** We shall also:

3.3.1. Appoint to You a Client Success Manager, who may change throughout the course of our partnership;

3.3.2. unless You have chosen to design (or procure a third party to create on Your behalf) Your own Platform brand in accordance with Clause 5.2, design an initial Platform brand for Your Platform following a brief from You, with two revisions requested by You if required;

3.3.3. Appoint You an Implementation Specialist for three months from the Contract Date to project manage the implementation of your platform;

3.3.4. use the Platform brand (either created by Us, You or a third party procured by You) to configure the Platform, including tile design and placements, menu creation, and page linking and segmentation, subject to a maximum of three segmentation groups being configured. Future segmentation revisions (as required) can be created by

You after the initial launch but any additional segment configurations requested of Us shall be subject to Our approval and additional fees to be agreed by the Parties;

3.3.5. Provide electronic communication materials to promote Your Platform (the "Communication Materials") All communication materials provided will be designed by Reward Gateway and tailored using your platform colours and logo.

3.3.6. provide You with access to the self-service Integrations Dashboard.

**3.4.** We shall also provide Employee Support through our help desk in accordance with the service levels detailed in Clause 4 of this agreement.

**3.5.** We shall also provide a Client Support team available Monday to Friday who will assist with technical questions and guidance on using our product administration portal. Where administration access is not available to You the Client Support team will provide administration support.

**3.6.** In performing Our obligations under this agreement, We shall comply with the Applicable Laws.

**3.7.** This agreement sets out the full extent of Our obligations and liabilities in respect of the design, development, testing, delivery and provision of the Services and the Platform. All conditions, warranties or other terms concerning the same which might otherwise be implied into this agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

### 4. Our Service Levels

**4.1.** We will comply with the following service levels:

4.1.1. 99% of orders for Retail Partner ne Reloadable Cards ordered by 5pm on a Working Day will be sent by first-class mail on the same day.

4.1.2. 99.5% Platform availability measured across any rolling 12-month period excluding scheduled maintenance and emergency preventative maintenance.

4.1.3. 99% of Retail Partner Instant Vouchers will be available in the Employee's account within 60 seconds of payment card approval.

4.1.4. Where a request is made for cashback to be withdrawn into a bank account, 95% of withdrawals of confirmed cashback will be transferred within three Working Days.

4.1.5. 100% immediate conversion where cashback is used towards purchase of Our Retail Partners vouchers and cards.

## 5. Client Obligations

### 5.1. You will:

5.1.1. not promote the Services or permit access to the Platform to any party other than Your Employees unless otherwise agreed in writing by Us;

5.1.2. not charge any party for access to the Platform or use of the Services;

5.1.3. not use or attempt to use the Services or the Platform for any illegal or unlawful purpose and/or for the purposes of publishing or otherwise distributing materials which are offensive, defamatory or in breach of any intellectual property rights belonging to any third party;

5.1.4. not reverse engineer, decompile, copy, distribute, disseminate, sub-licence, modify, translate, scan and/or adapt any software or other code or script which forms part of or is accessible via the Services or the Platform save as permitted by this Agreement;

5.1.5. cooperate with Us in all matters relating to the Services, including providing Us with such information and materials as We reasonably require to supply the Services and ensuring that such information is complete and

accurate in all material respects including, but not limited to, the Employee data uploaded through the self-service Integrations Dashboard;

5.1.6. set up integration to the Services or Platform from Your corporate Platform or identity provider (IDP) using the Integrations Dashboard, in order to configure Employees' access to the Platform and Services;

5.2. If You notify Us that You have decided to create (or procure a third party to create) Your Platform brand, then You must send the Platform brand (including at least the brand logo, corporate logo and unique domain name) to Us within three weeks of Your first implementation meeting with Us. The Platform brand must meet our reasonable requirements notified to You from time to time.

5.3. You are responsible for the printing, production and distribution of the Communication Materials.

5.4. Provide Us with a copy of any bespoke fonts you require Us to use in design work. These copies must be licensed for Reward Gateway to use. If a licensed copy of the font cannot be provided then Reward Gateway will use the closest alternative font available to Us.

5.5. In performing Your obligations under this agreement, You shall comply with the Applicable Laws.

## 6. Fees and Payment

6.1. We will invoice You the Implementation Fee at any time from the Contract Date and the first Annual Fee at any time from the Service Start Date.

6.2. We will invoice You one month prior to the end of each Contract Year for the Annual Fee. The Annual Fee will be subject to a 5% annual increase at the anniversary of the Service Start Date. Following the minimum term, for each Renewal Term, the Annual Fee will be subject to an increase equal to the greater of the Consumer Price Index (CPI) for the preceding twelve (12) months or five percent (5%).

- 6.3.** We will provide 5% additional complimentary employee licences, to support employee growth. You can add additional employees to the Platform at any time. Any additional employees added to the Platform will be billed on a quarterly basis.
- 6.4.** Unless stated otherwise in this Agreement, all invoices shall be paid by You within 30 days of receipt by bank transfer into a single bank account as nominated in writing from time to time by Us.
- 6.5.** The Annual fee does not include, phone and Internet access charges, mobile text messaging, wireless service and other data transmissions. Unless stated in the Agreement, You are responsible for such incidental charges.
- 6.6** Should You fail to pay any invoices owed under clause 6.4, We (at our sole discretion) shall charge You a monthly interest rate of 4% above the Australian Central Bank interest rate on the overdue sums payable to Us under each and every invoice. You shall be solely liable to pay any outstanding invoices along with all interest accrued.

## **7. GST**

- 7.1.** In this Clause 7, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("**GST Act**") which is not otherwise defined in this Agreement has the meaning given to it in the GST Act.
- 7.2.** All consideration provided under this Agreement is exclusive of GST unless it is specifically expressed to be GST inclusive. If a party ("**Supplier**") makes a taxable supply to another party ("**Recipient**") under or in connection with this Agreement in respect of which GST is payable, the Recipient must pay the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for the taxable supply was specified to include GST). The additional amount must be paid by the Recipient by the later of:

- 7.2.1. the date when any consideration for the taxable supply is first paid or provided; and

- 7.2.2. the date when the Supplier issues a tax invoice to the Recipient.

- 7.3.** If an adjustment event varies the amount of GST payable by a Supplier under this Agreement, the Supplier must adjust the amount payable by the Recipient to take account of the adjustment event. Any resulting payment must be paid by the Supplier to the Recipient, or the Recipient to the Supplier (as appropriate) within 10 business days of the Supplier becoming aware of the adjustment event. Any payment under this Section is deemed to be an increase or decrease of the additional amount payable under Section 6.2.
- 7.4.** If the GST payable in relation to a supply is less than the amount the Recipient has paid the Supplier under Section 6.2, the Supplier is only obligated to pay a refund of GST to the Recipient to the extent the Supplier receives a refund of that GST from the Australian Taxation Office.
- 7.5.** Subject to an express provision in this Agreement to the contrary, any payment, reimbursement or indemnity required to be made to a party (the "**Payee**") under this Agreement which is calculated by reference to an amount paid or payable by the Payee to a third party ("**Outgoing**") will be calculated by reference to that Outgoing inclusive of GST, less the amount of any input tax credit which the Payee is entitled to claim on that Outgoing.
- 7.6.** If part of a supply is a separate supply under GST law, that part is a separate supply for the purpose of this Section.
- 7.7.** Where the Supplier, Recipient or Payee in this Section 3 is a member of a GST group, a reference to the Supplier, Recipient or Payee includes the representative member of the GST group.
- 7.8.** This Clause 7 shall survive termination or expiry of this Agreement.

## **8. Renewal**

- 8.1.** We will supply the Services to You for the Minimum Term, after which this Agreement will automatically renew for subsequent

periods of twelve months (the “**Renewal Term(s)**”), unless terminated by either Party in accordance with Clause 13 or by giving a minimum of 90 days’ written notice prior to the expiry of the Minimum Term or Renewal Term, as applicable. We will give you written notice no less than 120 days before the expiry of the Minimum Term (and each Renewal Term, as applicable).

- 8.2.** For each Renewal Term, the Annual Fee will be subject to an increase equal to the greater of the Consumer Price Index (CPI) for the preceding twelve (12) months or five percent (5%).

## **9. Intellectual Property**

**9.1.** You acknowledge and agree that you do not acquire any intellectual property rights from Us related to the provision of the Services under this Agreement. You acknowledge and agree that, in the course of performing Our obligations under this Agreement, we may create software or other works of authorship, including training materials, user communications, in-app content (collectively, “**Work Product**”). We shall own all right, title and interest in such Work Product, including without limitation, all intellectual property rights therein and thereto. If any Work Product is delivered to You pursuant to or in connection with the Services (each, a “**Deliverable**”), We shall retain all right, title and interest in such Deliverables and hereby grants to You a non-exclusive, non-transferable right and license to use, execute, reproduce (excluding any modification rights), display and perform any such Deliverables only in connection with Your use of Our Services.

**9.2.** You agree that We, our employees and agents will be free to use and employ their general skills, know-how and expertise, and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of any Services performed under this Agreement

**9.3.** For the Term of the Agreement, You grant Us a non-exclusive, royalty-free, revokable licence to use Your Client Marks to the extent necessary to provide the Services and the Portal in accordance with this Agreement. You warrant that our use of such Intellectual Property Rights in accordance

with this Agreement will not infringe the Intellectual Property Rights of any third party.

- 9.4.** You shall indemnify Us in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) (“**Losses**”) suffered or incurred by us arising out of, or in connection with, any claim that the Client Marks infringes any Intellectual Property Rights of a third party, save to the extent that such Losses were caused by our (or our personnel, subcontractor or representatives’) fraud, wilful default, negligence or breach of this Agreement.

**9.5.** Save for Intellectual Property Rights licensed to Us in accordance with Clause 9.1, we confirm that we are the owner of all Intellectual Property Rights in or capable of subsisting in the Portal and/or that We hold the necessary authority from any applicable third party owner of any such Intellectual Property Rights to grant the limited licence to use the Portal to You under this Agreement. We warrant that Your use of the Services and the Portal in accordance with this Agreement will not infringe the Intellectual Property Rights of any third party.

**9.6.** We shall indemnify You in full against all Losses suffered or incurred by you arising out of, or in connection with, any claim that the receipt, use or supply of the Services, Portal and any deliverables infringes any Intellectual Property Rights of a third party.

**9.7.** If a party (“**Indemnifying Party**”) is required to indemnify the other party (“**Indemnified Party**”) under this Agreement, the Indemnified Party shall:

9.7.1. notify the Indemnifying Party without undue delay in writing of any claim against it qualifying for an indemnity (a “**Claim**”);

9.7.2. allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the Claim, always provided that Indemnifying Party shall obtain the Indemnified Party’s prior approval of any settlement terms, such approval not to be unreasonably withheld;

9.7.3. provide the Indemnifying Party with such reasonable assistance regarding the Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and

9.7.4. not, without prior consultation with the Indemnifying Party, make any admission relating to the Claim or attempt to settle it, provided that Indemnifying Party considers and defends any Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

## 10. Confidentiality

Each Party shall, during the term of this Agreement and thereafter, keep confidential all, and shall not use for its own purposes (other than the implementation of this Agreement) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any Confidential Information, unless that information is (i) already known to such Party at the time of disclosure, or (ii) subsequently becomes public knowledge other than by breach of this Agreement, or (iii) subsequently comes lawfully into the possession of such Party from a third party. Each Party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

## 11. Data Protection

**11.1.** To the extent that We collect any Personal Data in connection with the provision of the Services then such information shall be collected, stored, used and disclosed by Us in accordance with Data Protection Laws.

**11.2.** You warrant that You will comply with all of your obligations under Data Protection Laws which arise in connection with this Agreement. Further, You warrant that You will make such disclosures to, and obtain such consents from, the any owner of any Personal

Data disclosed to Us so that our collection, storage, use and disclosure of that Personal Data in accordance with the provision of the Services under this Agreement and Our Privacy Policy will not breach Data Protection Laws. You indemnify Us from any loss or claim which arises pursuant to clause 11.3.

**11.3.** We shall notify You within five (5) Working Days if We receive a request from an individual for which we hold any Personal Information (“**Data Subject**”) for access to that person's Personal Data. We shall provide You with reasonable co-operation and assistance in relation to any request made by a Data Subject to have access to that person's Personal Data. Other than in accordance with Data Protection Laws, we shall not disclose the Personal Data to any Data Subject or to a third party other than at Your request.

**11.4.** We shall permit you or your external advisers (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit Our data processing activities at a time agreeable between both parties and at Your cost.

**11.5.** On the termination of this Agreement, We shall, at Your option, return all the Personal Data transferred and the copies thereof to You or shall destroy all the Personal Data, unless any legislation imposed upon Us prevents Us from returning or destroying all or part of the Personal Data transferred.

**11.6.** We will notify You of any potential or actual losses of the Personal Information as soon as reasonably possible and, in any event, within three (3) Working Days of identification of any potential or actual loss to enable the Parties to consider what action is required in order to resolve the issue in accordance with Data Protection Laws.

**11.7.** Where We are aware that there are reasonable grounds to believe that there has been unauthorised access to or unauthorised disclosure of personal information, or a loss of personal information, in relation to any Personal Data held by Us pursuant to this Agreement, the Parties agree to use all reasonable endeavours to work together to:

11.7.1. take all reasonable steps to mitigate the risk of a data breach causing serious harm to any of the individuals to whom it relates;

11.7.2. unless otherwise directed by You, take all other action necessary to comply with the requirements of Data Protection Laws; and

11.7.3. take any other lawful and reasonable action as directed by You.

11.8. The Parties agree to work together and provide all reasonable assistance as is necessary to facilitate the handling of any data security breach in a compliant manner.

## 12. Liability

12.1. Unless otherwise set out elsewhere in this Agreement, each Party's liability to the other for all claims under or in connection with this Agreement is limited, in aggregate, to the amount of fees paid by You to Us under this Agreement.

12.2. Each Party will not be liable for:

12.2.1. Indirect or consequential loss; or

12.2.2. any loss of use or corruption of software, data or information, or loss of profit or goodwill arising out of use or access to the Platform, the provision of Services or otherwise in connection with this Agreement.

12.3. Terms, conditions, warranties and guarantees implied by law (including the *Competition and Consumer Act 2010* (Cth)) may apply to this Agreement to the extent required by those laws ("**Non-Excludable Guarantees**"). Nothing in this Agreement or any Order Form restricts, excludes or modifies, or purports to restrict, exclude or modify, any Non-Excludable Guarantee. Where We are permitted to limit

Your remedy against Us for breach of a Non-Excludable Guarantee, Our liability to You for breach of that Non-Excludable Guarantee is limited, at Our election, to: (a) in the case of goods: replacement of the goods or the supply of equivalent goods, repair of the goods, payment of the cost of replacing the goods or

acquiring equivalent goods, or payment of the cost of having the goods repaired; and (b) in the case of services either resupplying the services or payment of the cost of having the services supplied again.

12.4. We shall not be liable for any Cashback balances and Instant Vouchers that remain unclaimed beyond two years following issue.

## 13. Termination

13.1. We may terminate this Agreement with 15 days' notice if undisputed fees are not paid by You within 15 days from the date of notice being issued to You that the payment of such fees is past due.

13.2. Either Party may terminate with 30 days' notice if the other Party:

13.2.1. ceases or threatens to cease carrying on its business, operations or activities, becomes bankrupt or goes into liquidation, becomes insolvent, is dissolved, compounds with its creditors or has a receiver, administrative receiver or administrator appointed over the whole or any part of its assets or a petition is presented, or a meeting is convened for the purpose of considering a resolution, for the making of an administrative order, the winding-up, bankruptcy or dissolution of that Party or that Party suffers any similar process in any jurisdiction outside of Australia; or

13.2.2. commits a breach of this Agreement and fails to remedy such breach within 30 days of notice from the other Party.

13.3. We may suspend an Employee's access to the Services and/or the Platform at any time where we are permitted to do so by law or in accordance with the Employee Terms.

13.4. On termination, You will pay all outstanding fees and each Party will, on request, return to the other Party or delete all Confidential Information of the other Party, unless it is required to retain such information by applicable laws.

**13.5.** Termination or expiry of this Agreement on whatever basis shall be without prejudice to any rights or obligations of either Party which have accrued prior to the date of termination and shall not affect the continuation or coming into force of any provision of this Agreement which, whether expressly or by implication, is to continue in or come into force following expiry or termination.

#### **14. Force Majeure**

**14.1.** Subject to Clause 14.5, neither Party will be liable for any failure or delay in the performance of any of its obligations under this Agreement where such delay or failure is reasonably attributable to an event of Force Majeure.

**14.2.** Any Party subject to a Force Majeure event must promptly notify the other Party.

**14.3.** If a Force Majeure event continues beyond one month, either Party may terminate immediately by giving written notice to the other.

**14.4.** Neither Party will have any liability to the other in respect of termination due to Force Majeure.

**14.5.** Your obligation to pay the fees in accordance with Clause 6 shall not be affected by the occurrence of any event of Force Majeure.

#### **15. Notices**

Any notice given under this Agreement by either Party will be in writing and sent by pre-paid registered post or email to the addresses of the other Party as set out in the Client Agreement, or such other addresses as is notified in writing by that Party from time to time. Notice given under this Agreement shall not be valid if it is given by email and the Party giving the notice receives notification that the transmission of the email has failed. You warrant that any notices served on Your behalf under this Agreement shall be given by a duly authorised representative.

#### **16. Severance**

If any provision of this Agreement is found by any court or competent jurisdiction to be invalid, illegal or otherwise unenforceable, that provision

will be deemed not to form part of this Agreement and the remaining provisions shall remain in full force and effect.

#### **17. Partnership, Agency and the rights of third parties**

Nothing in this Agreement is intended to create a partnership between the Parties, and neither Party will have authority to act in the name of the other. No person or organisation that is not a party to this Agreement shall have no right to enforce any term of this Agreement, including, for the avoidance of doubt, any Retail Partner.

#### **18. Variation**

**18.1.** The terms of this Agreement may be varied by Us subject to Us providing You with at least 60 days' notice in writing of the terms to be varied in accordance with this Clause.

**18.2.** If You do not agree to any variations notified to You in accordance with this Clause 18, You have, without limiting or affecting any other rights or remedies available to You, the right to terminate this Agreement with immediate effect by giving written notice to Us. For the avoidance of doubt, where You exercise the right to terminate in accordance with this Clause 18 You shall pay any outstanding fees which are due and payable in relation to Services provided prior to the date of termination, but will not be liable for any fees in connection with the rest of the Minimum Term or the Renewal Term, as applicable.

#### **19. Dispute Resolution**

If any dispute arises in connection with this Agreement, the Parties will meet within 10 days to resolve it. If the dispute has not been settled within 10 days from such meeting, the Parties agree to try to settle unresolved disputes within the mediation of the Australian Disputes Centre before commencing arbitration or court proceedings (except proceedings for interlocutory relief). If the dispute is not settled by mediation within 14 days of commencement of the mediation or within such a further period as the parties may agree in writing, either Party



may commence arbitration or court proceedings in respect of the dispute.

## 20. Waiver

**20.1.** A waiver by either Party of any right under this Agreement is only effective if given in writing and will not be deemed a waiver of any subsequent breach or default.

**20.2.** A failure or delay by either Party in exercising any right or remedy provided in this Agreement or by law will not constitute a waiver of that right or remedy, or other rights of remedies.

**20.3.** No partial or single exercise by either Party of any right or remedy provided by this Agreement or by law will preclude or restrict the further exercise of any such right or remedy.

## 21. Governing Law

This Agreement is governed by the law applicable in the State of New South Wales, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales, Australia to settle any claim arising under this Agreement.

## 22. Legal Advice

Each party acknowledges and represents to each other that it has had the opportunity to seek and obtain separate and independent legal advice before entering into this Agreement. If either party has entered this Agreement without first taking legal advice it has done so at its sole and absolute discretion and it will not be entitled to rely upon the absence of legal advice as a defence to any breach of any of the provisions of this Agreement.

## 23. Employee Discounts

### 23.1. Additional Definitions

**SmartSpending™:** Employee discounts product providing online and in store discounts.

**Instant Voucher:** Digital code that holds discounted store credit.

**Cashback:** An online offer facility that allows You to receive a percentage of the cost or a fixed amount back after a purchase.

## 23.2. Our Obligations

A list of available Instant Vouchers and Cashbacks can be produced on request. You understand that this list may change due to reasons beyond Our control, such as a retailer ceasing to trade. The list will be correct at the point of request.

## 24. SmartSpending™ Mobile App

### 24.1. Additional Definitions

**eGift Card:** method of payment in order to redeem Products.

**Retailer listing:** A browsable and searchable list of all retailers that provide Cashback, Instant Voucher or eGift Card discount offers.

**Retailer screen:** A participating retailer screen showcasing all available discount offers by that retailer.

**Account:** An account where an Employee can see their Total savings, Approved Cashback balance, Pending Cashback balance, and their personal account details.

**Digital Wallet:** Saved list of Instant

Vouchers/eGift Cards purchased by the Employee for easy access. The Employee can mark Instant Vouchers as “used.”

### 24.2. Our Obligations

The SmartSpending™ app (described in Clause 24 above) puts Our Employee Discount offering into a single app for Employees and is available on Android and iOS. It can be used in addition to Your desktop site, with each way of saving replicated on both the desktop and the app. The app can be used to purchase Instant Vouchers/eGift Cards which can be used right away as well as being automatically saved to a Digital Wallet for future use. Employees can also earn Cashback when shopping online through the app, and use Cashback towards Instant Voucher purchases. The app can also be used to purchase Instant Cards and to top them up at a discounted price.

## 25. Employee Reward & Recognition

### 25.1. Additional Definitions

**Award(s):** the amount of the Award Value which Your nominated authorisers may award to Employees.

**Award Data:** details of Recipients and other information (including, where necessary, Personal Data) reasonably required to enable Us to process Awards.

**Award Value:** amount You wish to be awarded to the Employee.

**Recipient:** Employee who is the beneficiary of an Award.

**Reward and Recognition Service:** the service operated by Us on behalf of You whereby Recipients can receive an Award from Your nominated authorisers.

**Social Recognition Wall:** Social Recognition wall takes peer-to-peer and manager-to-peer moments of recognition and makes them public by adding them to a social wall feed.

**Social Recognition Platform:** the content management system integrated within the Platform that facilitates the real-time transmission of peer to peer social interactions, such as reactions and comments.

**Reward Marketplace:** reward redemption webpage where employees can choose to redeem their Awards.

### 25.2. Our Obligations

We will:

25.2.1. provide access for Recipients to a webpage with Your branding hosted on the Platform explaining the Award redemption process;

25.2.2. notify Recipients of Awards on receipt of Award Data;

25.2.3. credit the Recipient's Reward Gateway account with the Award Value within 2 working days of receipt of the Award Value from You in accordance with Clause 25.3.3;

25.2.4. enable functionality for a Recipient to choose and place an order for Vouchers

online. You accept that the selection of Vouchers may change and availability of any particular Voucher is not guaranteed. A list of available Vouchers can be produced on request;

25.2.5. cancel any Vouchers notified to Us as undelivered and, subject to security checks and investigation, issue replacement Vouchers to the Recipient as soon as reasonably practical;

25.2.6. provide You with a report of Vouchers chosen by Recipients, on request; and

25.2.7. provide a social recognition wall which takes peer-to-peer and manager-to-peer moments of recognition and makes them public by adding them to the Social Recognition Platform. The Social Recognition Platform facilitates the real-time transmission of peer to peer social interactions, such as reactions and comments.

### 25.3. Client Obligations

You will:

25.3.1. provide Us with monthly Award Data;

25.3.2. advise Us of any changes which could affect the operation of the Reward and Recognition Service or the Social Recognition Platform;

25.3.3. pay Us the Award Value that is credited to the Recipients' accounts in accordance with Clause 25. Where Awards are issued prior to payment, ownership remains with Us until payment received and You shall reimburse Us for any Award redeemed prior to payment;

25.3.4. be fully responsible for the completeness and accuracy of Award Data;

25.3.5. obtain Your own tax advice to ensure that the operation of the Reward and Recognition Programme on the

Platform is in accordance with all applicable legislation and

25.3.6. account for liability for tax and national insurance arising in connection with the

Awards and the Reward and Recognition Service; and

25.3.7. advise Us of any changes or circumstances which could affect the operation of the Social Recognition Wall.

## 26. Employee Recognition & Reward Fees and Payments

26.1. We will send a pro-forma invoice to You for the Award Value in advance, on a mutually agreed frequency period. Credit will be topped up, upon Client request, provided that the invoice had been paid. At the end of the period, we will collate the Awards claimed. Any remaining Award Value will be carried forward to the next period.

26.1.1. Notwithstanding Clause 6.3, You will pay all valid invoices for the Award Value in full within 14 days of the invoice being submitted to You for payment.

26.1.2. We will invoice You for any other agreed disbursements at the time You confirm the order and such invoices shall be paid in accordance with Clause 6.3.

## 27. Award Value

Awards are provided at full face value and are not subject to administration, processing, delivery or handling fees. In order to support the costs of the Reward and Recognition Service, the Awards are not eligible for any retail discounts.

## 28. E-cards

### 28.1. Additional Definitions

**E-Card:** an electronic organisational greeting containing pictorial graphics and message lines which emphasise the values and

behaviours that You wish to see recognised.

**E-Card Platform:** the content management system integrated within the Platform that facilitates the real-time transmission of peer to peer and manager to subordinate recognition messages and provides access to authorised Employees to interrogate traffic flow data and additional message content where the sender allows.

## 28.2. Our Obligations

We will:

28.2.1. provide access for Recipients to a webpage with Your branding hosted on an integrated E-Card platform explaining E-Cards and how they operate;

28.2.2. enable functionality for Employees to choose from a selection of E-Cards online and transmit the same to another employee on a real-time basis;

28.2.3. report on E-Cards chosen by Employees to authorised Employees; and

28.2.4. provide draft initial designs, for up to 12 eCards, with up to three (3) rounds of revisions.

## 28.3. Client Obligations

You will:

28.3.1. advise Us of any changes or circumstances which could affect the operation of the E-Card Service.

## 29. Award File Plus

### 29.1. Additional Definitions

**Award File:** is the engine that supports point-in-time recognition, such as large group achievements or long-service awards. It allows managers to acknowledge multiple employees for their contributions in bulk.

**Award Types:** the awards You have created to be used on the Platform.

**Award Value:** amount You wish to be awarded to the Employee.

**Award File Plus Platform:** the reward program integrated within the Platform that facilitates the real-time transmission of awards and provides access to authorised individuals to interrogate traffic flow data and additional message content.

## 30. Award Nominator

### 30.1. Additional Definitions

**Nomination:** a peer-to-peer nomination consisting of the responses to the fields defined in the Award Nominator Form.

**Award Nominator Form:** the question and answers You have created to collect the information needed to assess the Nomination.

**Nomination Method:** the approval process You have requested and the method You want it to operate.

**Award Types:** the awards You have created to be used on the Platform.

**Award Value:** amount You wish to be awarded to the Employee.

**Award Nominator Platform:** the reward program integrated within the Platform that facilitates the real-time submission of nominations, ready to be approved by authorised individuals. Once approved the awards are dispatched to the award recipient.

**Recipient:** Employee who is the beneficiary of an Award following a Nomination.

### 30.2. Our Obligations

We will:

30.2.1. Assist You in creating up to five Award Types; and

30.2.2. subject to Your compliance with Clause 30.3, once a Nomination has been approved by an authorised individual and the Award Value and Award Type has been confirmed by the authorised individual, dispatch the Award to the Recipient. 30.3.

### 30.3 Client Obligations

You will:

30.3.1. provide Us with details of the Award Types You have created at least three (3) weeks prior to the Launch Date.

## 31. Instant Award

### 31.1. Additional Definitions

**Instant Awards:** are awards sent by Pot Owners to instantly recognise and reward Employees.

**Instant Award Types:** the awards You have created to be used by Pot Owners.

**Award Value:** the amount You wish to be awarded to the Employee.

**Pot Owner:** an Employee You have assigned reward budget to.

**Instant Awards Platform:** the reward programme integrated within the Platform that facilitates the real-time transmission of Instant Awards from Pot Owners.

### 31.2. Our Obligations

We will:

31.2.1. draft the initial design for up to twelve Instant Award cards with up to two rounds of revisions; and

31.2.2. subject to confirmation of the InstantAward Type and Award Value, allow Pot Owners to send Instant

Awards to Employees through the InstantAwards Platform.

## 32. Connect+ mobile app

### 32.1. Additional Definitions

**Connect+ App:** an app for connecting and interacting with recognition stories and blog post happening across Your organisation, Employees can send eCards and view their own and their peers' profiles also Connect+ App allows peer-to-peer nomination

**Social feed:** a chronological feed displaying recognition moments and blog posts.

**eCard:** an electronic organisational greeting containing pictorial graphics and message lines which emphasise the values and behaviours that You wish to see recognised.

**Blog Post:** an article from a blog written by an authorised Employee.

**Profile:** a profile where an Employee can choose which personal data they want to make public to share with their peers.

**Alerts:** push notifications that the Employee can turn on or off.

### 33. Employee Communication

#### 33.1. Additional Definitions

**Employee Communication:** Any form of communication You do via the Platform.

**Employee Communication Data:** details contained within content and other Personal Data sufficient to enable Us created segmented versions of content.

**Employee Communication Types:** SmartComms, Employee Files Locker and Connect+ mobile app.

### 34. Employee Communications SmartComms

#### 34.1. Additional Definitions

**SmartComms:** employee communication tools including Blogs, Pages, Layouts and Tiles.

**SmartComms Platform:** the content management system integrated within the Platform that facilitates the real-time communication between Employees, and provides access to authorised Employees to interrogate traffic flow data.

**Blogs:** a collection of articles written by authorised Employees.

**Pages:** a collection of pages used to form the base of the Platform and host information You want to share with Your Employees.

**Layouts:** a collection of layouts used to host information and help

Employees navigate the wider Platform.

**Tiles:** used to create layouts to display information or navigate Employees to other content/areas of the Platform.

### 34.2. Our Obligations

We will:

34.2.1. create up to 10 Pages;

34.2.2. provide initial access to the Platform for populating Blog content (timing to be agreed by the parties during planning)

### 34.3. Client Obligations

You will:

34.3.1. provide Us with the content for Pages, Layout and Tiles and the initial content for the Blogs, to be supplied three weeks prior to the Launch Date.

### 35. Employee Survey

#### 35.1. Additional Definitions

**Employee Survey:** surveys created, schedules and dispatched by You to Your employees or list of recipients Employee Survey data: details of Recipients and other Personal Data sufficient to enable Us to process Surveys.

**Employee Survey Types:** {Employee Survey, Survey Templates, Polls, Engaged Index and eNPS}

**Employee Survey Service:** the service operated by Us on behalf of you

### 36. Employee Wellbeing

#### 36.1. Additional Definitions

**Wellbeing Centre:** provides employees access to Mental, Physical, Nutritional and financial wellbeing content, tools and services on the Platform.

**Health Calendar:** Monthly plan of wellbeing topics displayed within the Wellbeing Centre and communicated to Employees via a monthly communication.

## 36.2. Our obligations

We will:

- 36.2.1. configure and host the Wellbeing Centre and provide a help desk for Employee enquiries;
- 36.2.2. update content on the Wellbeing Centre regularly; and
- 36.2.3. unless You restrict this functionality, provide monthly Employee communications aligned to the Health Calendar which Employees can opt-in or opt-out to receive.

## 36.3. Client obligations

You will:

- 36.3.1. give sign-posted access to the Wellbeing Centre on Your Platform and communicate reference to the Wellbeing Centre for all Employees.

## 37. Wellbeing+

Is our comprehensive wellness application making health fun, social and approachable in the workplace. The application allows Employees to participate in health challenges, connect any activity tracker to track progress, earn rewards, and to view on-demand content in all categories of health (including mental, mindful, physical, sleep and nutrition).

### 37.1 Additional Definitions

37.1.1. **“Content”** means all data, including all text, sound, video or image files and software that can be published through the use of the Services.

37.1.2. You and Your Employees and Associated Account employees may be able to post or store Content to third party websites and or Our websites, which will be made available through the Services. You may be able to post or provide materials (including feedback) that are part of the Services in a publicly accessible area that allows You to communicate with others. Use of the websites and the sharing of Content will be subject to the terms of use associated with those publicly accessible websites. You acknowledge that certain technical processing for posting Content may be required to

store and retrieve the Content, conform to connecting networks’ technical requirements, or conform to the limitations of the Services.

37.1.3. The Services contain links to third-party websites. These third-party websites are not under our control. If We have included these links in the Services, We provide them as a convenience only. The including of these links is not an endorsement by Us of any third-party website, service or product. We reserve the right to disable links to any third-party website that You post on the Services.

37.1.4. We are not liable for any Content not provided by Us. You are solely responsible for maintaining and backing up any Content that You use with the Services. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use such Content. We shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Content that You use with the Services.

### 37.3. Associated Accounts

37.3.1. Only You may use the Services account. However, We may allow You to set up additional accounts that are dependent on Your account (each, an “Associated Account”). We may limit associated accounts. You are responsible for all activity under an Associated Account. You are solely responsible for monitoring the usage of the Services by Associated Accounts and for any use or misuse of the Services resulting from any Associated Account or any third party using any password or username selected by or issued to You.

### 37.4 One Time Wellbeing +

37.4.1 You have opted to purchase one time access only to Wellbeing+, where the period of use will be limited to a specified duration. The payment terms and period of use is specified in the Client Agreement. Clauses 3, 4, 6 and 8 of these Terms and Conditions will not apply to this one time access.