

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission given for the purposes of section 87B

by

Cabcharge Australia Limited (ACN 001 958 390)

1 Persons giving this Undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Cabcharge Australia Limited ACN 001 958 390 (**Cabcharge**) of 152 - 162 Riley Street, East Sydney NSW 2010 for the purposes of section 87B of the *Competition and Consumer Act 2010 (CCA)*.

2 Background

- 2.1 Cabcharge is a diversified Australian technology, financial services, payments and passenger land transport company.
- 2.2 Cabcharge provides products to its account holders for use in transactions in connection with services supplied by operators of taxis and hire cars, including Cabcharge branded charge cards, paper vouchers and eTickets ("**Cabcharge Products**").
- 2.3 Cabcharge also supplies technology and systems to merchants throughout Australia that allow the manual acceptance and electronic processing of transactions for paying taxi fares by Cabcharge Products and third party bank issued credit, charge and debit cards such as Visa, MasterCard and American Express.
- 2.4 On 24 September 2010, the Federal Court of Australia declared that Cabcharge had contravened section 46 of the *Trade Practices Act 1974*, between 1 February and 28 July 2005 and between 1 and 29 July 2008, by refusing requests to it by Travel Tab Australia Pty Ltd ACN 107 511 624 (**Travel Tab/Mpos**) to agree, on commercial terms, to allow Cabcharge's non-cash payment instruments to be accepted and processed electronically by Travel Tab/Mpos' system for the payment, by non-cash means, of taxi fares and charges by taxi passengers.
- 2.5 The orders made by the Federal Court of Australia on 24 September 2010 included that Cabcharge must establish a Trade Practices Compliance and Education/Training Program and maintain and administer it for a period of three years. The Trade Practices Compliance and Education/Training Program required Cabcharge to establish a written set of criteria against which it would assess every request for another business to accept or process Cabcharge's non-cash payment instruments by electronic means or with an EFTPOS (electronic funds transfer at point of sale) or other electronic system for the payment, by non-cash means, of fares and charges incurred by taxi passengers. On 22 October 2010, Cabcharge established a Request Processing Policy to comply with this requirement (**Request Processing Policy**).
- 2.6 In the period from February 2011 to June 2012, National Billing Group Pty Ltd (**NBG**) made a number of requests to process Cabcharge Products pursuant to the Request Processing Policy. Cabcharge determined not to progress the requests beyond Stage 1 of the Request Processing Policy and accordingly rejected NBG's requests.

- 2.7 Cabcharge understands that the ACCC is concerned that Cabcharge has engaged in conduct that constitutes a contravention of section 46 of the CCA. Cabcharge understands the ACCC is concerned that, since at least February 2011:
- (a) Cabcharge has had a substantial degree of power in one or more of the following markets:
 - (i) the Australia-wide market for the supply of services to enable the acceptance and processing of non-cash payments for taxi fares and charges by taxi passengers;
 - (ii) the Australia-wide market for the supply of non-cash instruments that can only be used for the payment of taxi fares and charges;
 - (b) Cabcharge has refused, or alternatively constructively refused, to deal with requests by NBG to process Cabcharge Products for purposes which include a substantial purpose of eliminating or substantially damaging NBG, and/or deterring or preventing NBG from engaging in competitive conduct in the market identified in clause 2.7(a)(i) above;
 - (c) Cabcharge has constructively refused to deal with other third party processors in establishing and implementing the Request Processing Policy in its current terms so as to discourage or deter requests from third party processors to process Cabcharge Products for purposes which include the substantial purpose of deterring or preventing third party processors from engaging in competitive conduct in the market identified in clause 2.7(a)(i) above.
- 2.8 Cabcharge acknowledges the ACCC's concerns and has offered to provide this Undertaking to address them.

3 Commencement of this Undertaking

- 3.1 This Undertaking comes into effect when:
- (a) the Undertaking is executed by Cabcharge; and.
 - (b) the ACCC accepts the Undertaking so executed,
- (Commencement Date).**
- 3.2 Upon the Commencement Date, Cabcharge undertakes to assume the obligations set out in Part 4 below.

4 Undertakings

Interpretation

- 4.1 The standard payment processing agreement annexed at **Annexure A**, or as varied in accordance with clause 4.4, constitutes the “**Standard Payment Processing Agreement**.”
- 4.2 Each of the following capitalised terms used in this Undertaking have the meaning given to that term in the Standard Payment Processing Agreement:
- Acquirer, Business Day, Engagement and Connectivity Guide, Services, Service Standards, System.**

Non-Standard Payment Processing Agreement

- 4.3 Nothing in this Undertaking prevents Cabcharge or the person seeking access to the System (“**Applicant**”) from negotiating an agreement containing non-standard terms for the provision of access to the System in accordance with this Undertaking (“**Non-Standard Payment Processing Agreement**”).

Variation of the Standard Payment Processing Agreement

- 4.4 Cabcharge may vary the Standard Payment Processing Agreement at any time with the consent of the ACCC.
- 4.5 Any variations made to the Standard Payment Processing Agreement will not override the terms of executed Standard Payment Processing Agreements or Non-Standard Payment Processing Agreements.

Publication of the Standard Payment Processing Agreement

- 4.6 Cabcharge undertakes that, for a period of 5 years, it will:
- (a) publish the Standard Payment Processing Agreement on its website; and
 - (b) publish any variation to the Standard Payment Processing Agreement under clause 4.4 on its website within 3 Business Days of the variation taking effect.

Good faith negotiation

- 4.7 Cabcharge undertakes that, for a period of 5 years, it will negotiate with an Applicant for the provision of access to the System in good faith in accordance with this Undertaking, including in any determination issued under clause 4.16 and clause 4.17.

Preliminary inquiries

- 4.8 Provided the Applicant (and the Acquirer, if applicable) has first entered into a confidentiality agreement with Cabcharge in the form of the standard confidentiality agreement annexed at **Annexure B** (“**Confidentiality Agreement**”), or in another form as agreed with Cabcharge, Cabcharge undertakes that, for a period of 5 years, Cabcharge will:
- (a) on request by an Applicant or an Acquirer, provide the Applicant or the Acquirer with a copy of the Engagement and Connectivity Guide within 5 Business Days of receiving the request;
 - (b) provide any information requested by an Applicant or an Acquirer within 5 Business Days of receiving the request, provided the information:
 - (i) is related to access to the System;

- (ii) is reasonably required by the Applicant or the Acquirer to assist in negotiations in relation to the Applicant's application for access to the System in accordance with clause 4.9 ("**Application**");
 - (iii) is in Cabcharge's possession or is reasonably accessible to Cabcharge; and
 - (iv) is not subject to an obligation of confidentiality binding upon Cabcharge which prevents its disclosure;
- (c) notify the Applicant or the Acquirer within 5 Business Days and seek further clarification of the request if the request for information is not sufficiently clear or detailed to enable Cabcharge to identify and collate the information sought; and
 - (d) upon receiving clarification from the Applicant or the Acquirer, provide the information requested to the Applicant or the Acquirer within a further 5 Business Days.

Application process

4.9 Cabcharge undertakes that, for a period of 5 years, upon receiving a complete written Application from an Applicant that contains the following information:

- (a) the Applicant's company name;
- (b) the Applicant's ABN/ACN;
- (c) the Applicant's website (if available);
- (d) the Applicant's address;
- (e) the Applicant's contact details;
- (f) details of the Applicant's authorised company representative;
- (g) whether the Applicant is seeking a payment processing agreement for a fixed term, and if so, the duration of the payment processing agreement sought;
- (h) a high-level proposal identifying how the Applicant proposes to establish that it will ultimately be able to satisfy the Eligibility Requirements outlined at clause 4.14(b), and any supporting information;
- (i) whether the Applicant wishes to enter into a payment processing agreement with Cabcharge in the form of the Standard Payment Processing Agreement, or wishes to otherwise negotiate non-standard terms for the provision of access to the System and enter into a payment processing agreement with Cabcharge in the form of a Non-Standard Payment Processing Agreement,

Cabcharge will acknowledge receipt of the Application in writing to the Applicant within 3 Business Days of its receipt, or such longer period in accordance with clause 4.11.

- 4.10 If the Application is incomplete, Cabcharge may, prior to acknowledging the Application, seek in writing such additional information as is reasonably required to enable Cabcharge to consider the Application, or clarification of the information that has been provided in the Application to the extent that such clarification is reasonably required to enable Cabcharge to consider the Application.
- 4.11 Cabcharge undertakes that, for a period of 5 years, it will:
- (a) advise the Applicant of any additional information or clarification it requires in accordance with clause 4.10 within 10 Business Days of receipt of the Application; and
 - (b) provide a written acknowledgment of the receipt of the completed Application within 7 Business Days of receiving the required information or clarification from the Applicant.

Execution of payment processing agreement

- 4.12 Subject to an Applicant submitting to Cabcharge a complete Application in accordance with clause 4.9, Cabcharge undertakes that, for a period of 5 years, it will:
- (a) execute a payment processing agreement in the form of the Standard Payment Processing Agreement within 5 Business Days of Cabcharge determining that it has received a complete Application in accordance with clause 4.9; or
 - (b) if the Applicant wishes to enter into a payment processing agreement in the form of a Non-Standard Payment Processing Agreement, execute a payment processing agreement in the form of a Non-Standard Payment Processing Agreement within 5 Business Days of Cabcharge and the Applicant agreeing to the terms of the Non-Standard Payment Processing Agreement.

Cabcharge assistance to enable performance of the Services

- 4.13 Cabcharge undertakes that, for a period of 5 years, following execution of a payment processing agreement in the form of a Standard Payment Processing Agreement or in the form of a Non-Standard Payment Processing Agreement, it will:
- (a) provide to the Applicant any reasonable technological support requested by the Applicant (including for the benefit of the Acquirer in connection with services provided by the Acquirer in accordance with the agreement) to enable the Applicant to access the System and perform the Services;
 - (b) within 5 business days of execution, provide to the Applicant and, if applicable, the Acquirer (and to the ACCC, if requested) a detailed timetable ("**Timetable**") specifying the estimated timing in relation to each step to be undertaken by Cabcharge, the Applicant and the Acquirer, in order to enable the Applicant to access the System and to perform the Services;
 - (c) provide to the Applicant and, if applicable, the Acquirer (and to the ACCC, if requested) regular status updates specifying whether progress with the Timetable is on schedule.

Provision of Access

- 4.14 Cabcharge undertakes that, for a period of 5 years, provided that:
- (a) the Applicant and Cabcharge have executed a payment processing agreement in the form of the Standard Payment Processing Agreement, or in the form of a Non-Standard Payment Processing Agreement; and

- (b) the Applicant has demonstrated to Cabcharge's reasonable satisfaction that the Applicant will be able to provide the Services to Cabcharge and comply with the terms and conditions set out in the Standard Payment Processing Agreement or the Non-Standard Payment Processing Agreement (**Eligibility Requirements**),

Cabcharge will provide access to the System to the Applicant on the terms and conditions set out in the Standard Payment Processing Agreement or a Non-Standard Payment Processing Agreement, as applicable.

Rejection of an Applicant

4.15 Cabcharge undertakes that, for a period of 5 years, it will:

- (a) notify an Applicant within 5 Business Days if it:
 - (i) refuses or ceases to negotiate with the Applicant;
 - (ii) refuses to enter into a Standard Payment Processing Agreement with the Applicant, or a Non-Standard Payment Processing Agreement with the Applicant; or
 - (iii) otherwise refuses to provide access to the System to the Applicant;
- (b) provide to the Applicant written reasons for its decision at the time it notifies the Applicant, including (if applicable) the reasons why it considers that the Applicant has not satisfied the Eligibility Requirements.

Dispute resolution

4.16 Cabcharge undertakes that, for a period of 5 years, upon receiving written notice from an Applicant that the Applicant considers that Cabcharge has unreasonably refused to commence, unreasonably delayed or unreasonably ceased negotiation, Cabcharge will:

- (a) either:
 - (i) jointly, with the Applicant, appoint an independent third party selected by Cabcharge and the Applicant jointly; or
 - (ii) if Cabcharge and the Applicant fail to agree an independent third party within 5 Business Days, request the President of the Institute of Arbitrators & Mediators Australia (**IAMA**) to appoint an independent third party,

to determine whether Cabcharge has unreasonably refused to commence, unreasonably delayed or unreasonably ceased negotiation, taking into consideration the requirements of this Undertaking; and

- (b) comply with the determination of the independent third party.

4.17 If Cabcharge notifies an Applicant that Cabcharge considers that the Applicant is not negotiating in good faith, Cabcharge:

- (a) may:
 - (i) jointly, with the Applicant, appoint an independent third party selected by Cabcharge and the Applicant jointly; or

- (ii) if Cabcharge and the Applicant fail to agree an independent third party within 5 Business Days of Cabcharge notifying the Applicant that it considers the Applicant is not negotiating in good faith, request the President of the IAMA to appoint an independent third party,

to determine whether the Applicant is negotiating in good faith, taking into consideration the requirements of this Undertaking; and

- (b) will comply with the determination of the independent third party.

5 Acknowledgements

5.1 Cabcharge acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
- (b) the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications; and
- (c) this Undertaking in no way derogates from the rights and remedies available to any person arising from the alleged conduct.

Executed as an Undertaking

EXECUTED by CABCHARGE
AUSTRALIA LIMITED (ACN 001 958
390) in accordance with section 127(1)
of the *Corporations Act 2001* (Cwlth) by
authority of its directors:


Signature of director

Andrew Skelton
Name of director (block letters)


Signature of director/company
secretary*

*delete whichever is not applicable


ADRIAN LUCCHESI
Name of director/company secretary*
(block letters)

*delete whichever is not applicable

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the
Competition and Consumer Act 2010 (Cth) on:

11 June 2015
Date

and signed on behalf of the Commission:


Chairman

26 June 2015
Date

Annexure A: Standard Payment Processing Agreement

Payment Processing Agreement

Dated [•] 2015

Cabcharge Australia Ltd. ("**Cabcharge**")
[*insert name*] ("**Payment Processor**")

Payment Processing Agreement

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Details

Parties		Cabcharge and the Payment Processor, each as described below.
Cabcharge	Name	Cabcharge Australia Ltd
	ABN	99 001 958 390
	Address	152-162 Riley Street Sydney NSW 2010
	Telephone	[Cabcharge to provide]
	Fax	[Cabcharge to provide]
	Attention	[Cabcharge to provide]
Payment Processor	Name	[full name]
	ABN/ACN/ARBN	[ABN/ACN/ARBN number]
	Address	[address]
	Telephone	[telephone number]
	Fax	[fax number]
	Attention	[insert details]
Recitals	A	Cabcharge has offered to provide the Payment Processor access to the System on the terms set out in this Agreement.
	B	The Payment Processor has agreed to accept the Cabcharge Cards and to provide the Services to Cabcharge on the terms set out in this Agreement.
Governing law	New South Wales	
Date of agreement	See signing page	

Payment Processing Agreement

General terms

1 Access to and use of the System

1.1 Access to the System

Cabcharge will provide the Payment Processor with:

- (a) a copy of the Engagement and Connectivity Guide on execution of this Agreement (if not previously provided);
- (b) access to the System in accordance with, and subject to, the provisions of this Agreement; and
- (c) at no cost to the Payment Processor, any reasonable technological support requested by the Payment Processor (including for the benefit of the Acquirer in connection with services provided by the Acquirer in accordance with this Agreement) to enable the Payment Processor to access the System and to perform the Services (including through the use of the services of the Acquirer in accordance with this Agreement). This support will include, but will not be limited to:
 - (i) access to simulators for testing purposes;
 - (ii) advice in relation to access to, and use of, the System.

1.2 Conditions for access to the System

Cabcharge will allow the Payment Processor to access and use the System if:

- (a) the Payment Processor provides the Services to Cabcharge on the terms set out in this Agreement;
- (b) the Payment Processor demonstrates to Cabcharge prior to first accessing the System that they can meet the Service Standards (including through the use of the services of the Acquirer in accordance with this Agreement);
- (c) the Payment Processor continues to meet the Service Standards at all times during the term of this Agreement; and
- (d) the Payment Processor gives written notice to Cabcharge of the appointment of the Acquirer by the Payment Processor on or prior to the date of this Agreement, and of any replacement Acquirer at least 30 days before such replacement becomes effective.

If Cabcharge reasonably determines that the Payment Processor does not meet the Service Standards (including by the use of the Acquirer):

- (i) Cabcharge may refuse the Payment Processor access to the System until such time as the Payment Processor can demonstrate to Cabcharge that they meet the Service Standards; and
- (ii) Cabcharge will provide the Payment Processor with detailed reasons for its determination.

If, acting reasonably, the Payment Processor disputes any of the determinations made by Cabcharge, the parties will jointly appoint an independent third party who will determine whether the Payment Processor has met the Service Standards. Each party will bear the costs of appointment of the third party equally.

1.3 Use of the System

The Payment Processor must not:

- (a) use the System in any manner which could damage or otherwise negatively affect the reputation of Cabcharge or the goodwill or other rights associated with the System;
- (b) permit any third party to access or use the System, other than the Acquirer or other third party in accordance with and subject to this Agreement (including clause 14.2);
- (c) reproduce, make corrections to, or otherwise modify or adapt any part of the System or create any derivative works based upon any part of the System; or
- (d) de-compile, disassemble or otherwise reverse engineer any part of the System or permit any third party to do so.

1.4 Costs

The Payment Processor is responsible for its own costs relating to obtaining, installing and maintaining appropriate equipment (including communication links and software) required to access or use the System.

1.5 System availability

Cabcharge reserves the right, acting reasonably, to deny access to the System for the purposes of conducting maintenance, for security purposes or as otherwise required by any law or regulation (a **System Outage**). Where possible Cabcharge will provide the Payment Processor with five (5) Business Days' prior written notice of any such System Outage. The Parties acknowledge that a System Outage may impede the ability of the Payment Processor to provide the Services while such System Outage is continuing.

1.6 Force Majeure Event

- (a) Despite any other provision of this Agreement, Cabcharge will not be responsible for any loss or expense suffered or incurred by the Payment Processor or any other person as a result of, and to the extent that, Cabcharge is unable to grant the Payment Processor access to the System due to the occurrence of a Force Majeure Event. The Parties acknowledge that a Force Majeure Event may impede the ability of the Payment Processor to provide the Services while such Force Majeure Event is continuing.
- (b) Cabcharge must take all reasonable steps to avoid, remove or limit the effects of the Force Majeure Event and restore access to the System as quickly as possible.

2 Fees and Hiring Payments

2.1 Payment Processing Fee

Cabcharge will pay a payment processing fee equal to AUD 0.20 per Hiring (the "**Fee**") to the Payment Processor per Cabcharge Card Transaction unless it is an Invalid Transaction.

The Fee is inclusive of GST.

Cabcharge may change the amount of the Fee if there is:

- (a) a change in any law or Industry Code, or any official directive, requirement or request of any Government Agency binding on Cabcharge that increases Cabcharge's costs of providing access to the System; or
- (b) a change in any law or Industry Code or any official directive, requirement or request of any Government Agency binding on Cabcharge which reduces, or otherwise limits Cabcharge's ability to charge, the Cabcharge Service Fee to an amount below 5% of the Face Value (inclusive of GST); or
- (c) a significant change to any fee that Cabcharge pays to a third party directly in connection with the System,

provided that, in each case, the Fee may not be amended by more than a reasonable amount, determined by Cabcharge acting in a commercially reasonable manner, having regard to all the relevant circumstances.

Cabcharge will give the Payment Processor 60 days' prior notice in writing of any change to the amount of the Fee unless Cabcharge has, or would have after due enquiry, less notice of such change, in which case Cabcharge will notify the Payment Processor in writing immediately on it receiving notice of that change.

If the Payment Processor disputes any adjustment of the Fee made by Cabcharge, the parties will jointly appoint an independent third party who will determine whether the changes to the Fee are reasonable having regard to all the relevant circumstances. Each party will bear the costs of appointment of the third party equally.

2.2 Hiring Payments

Cabcharge agrees to pay to the Payment Processor the Face Value for all Approved Transactions less the Face Value of any Approved Transaction which is an Invalid Transaction and which has not earlier been deducted in accordance with this clause 2.2 (the "**Hiring Payment**").

Consistent with the deduction in relation to an Invalid Transaction referred to above, Cabcharge is not liable for any amount to the Payment Processor in connection with an Invalid Transaction. The Payment Processor must recover any amounts due to it in connection with any Invalid Transaction from the relevant Driver or otherwise in accordance with the arrangement it has in place with the relevant Driver.

2.3 Payment Dates

On each Payment Date, Cabcharge will pay to the account nominated by the Payment Processor the aggregate Fees and Hiring Payments accrued since the previous Payment Date.

Cabcharge may from time to time in its absolute discretion by notice in writing to the Payment Processor amend the Payment Dates, provided that a Payment Date will occur at least twice in every working week (Monday to Friday) and no less frequently than Cabcharge pays taxi network operators.

2.4 Increase in Payment Processing Fee

- (a) At any time prior to the first anniversary of the date on which Cabcharge first allows the Payment Processor to access the system (the "**First**

Anniversary Date”), the Payment Processor may notify Cabcharge of its intention to enter into negotiations to seek an increase in the quantum of the Fee.

- (b) If the Payment Processor notifies Cabcharge in accordance with subparagraph (a), during the period which is 14 days (the “**Negotiation Period**”) immediately after the First Anniversary Date, each Party agrees to enter into genuine negotiations in good faith with the other Party to seek to agree an increase in the quantum of the Fee to take effect on and from 14 days after the First Anniversary Date, including meeting in person as appropriate to give effect to such genuine and good faith negotiations.
- (c) If during that Negotiation Period the Parties wish to agree to an increase in the Fee as contemplated by subparagraph (b), the Parties will enter into a written variation to this Agreement to do so.
- (d) If by the end of that Negotiation Period the Parties have not entered into a written variation to this Agreement in the manner contemplated by subparagraph (c), the Fee will remain unchanged and as set out in this Agreement at that time.

3 Audit

The Payment Processor agrees that Cabcharge may, acting reasonably, conduct audits of the Payment Processor’s compliance with this Agreement (including compliance with the Service Standards) and that such audits may be carried out by any of the following, as relevant (each an “**Auditor**”):

- (a) Cabcharge;
- (b) a third party nominated by Cabcharge;
- (c) a third party appointed by the Payment Processor, or
- (d) a Regulator.

The Payment Processor must co-operate with any audit in good faith, including:

- (e) providing the Auditor with reasonable access to Payment Processor’s premises;
- (f) providing reasonable assistance to the Auditor but without access to dedicated employee services, including the provision of adequate working space and connectivity;
- (g) allowing the Auditor to examine and copy records which are relevant to the subject of the audit, and
- (h) ensuring that copies of any reports resulting from the audit are provided promptly to Cabcharge’s relevant representatives.

Nothing in this clause entitles an Auditor to access:

- (a) any of the Payment Processor’s information, data, materials, systems or records that are not directly related to the provision of the Services under this Agreement;
- (b) information regarding the Payment Processor’s profit margins or cost base arising from the performance of its obligations under this Agreement; or

- (c) information relating to other clients or customers of the Payment Processor.

Audits:

- (d) will be conducted expeditiously, efficiently, and at reasonable Business Hours; and
- (e) will be conducted on reasonable prior written notice but may be less if Cabcharge considers acting reasonably and with reasons provided to the Payment Processor that certain audits should be conducted on shorter notice.

Cabcharge will bear its own costs of conducting any audit and inspection under this clause.

4 Representations and Warranties

4.1 Representations and warranties by the Payment Processor

The Payment Processor represents and warrants to Cabcharge that:

- (a) **(power)** it has power to enter into this Agreement, to comply with its obligations under it and exercise its rights under it;
- (b) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this Agreement does not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets; or
 - (iii) any document or agreement binding on or applicable to it or its assets or constitute a review event, event of default, termination, cash cover requirement, prepayment or similar event (each however described) under any such document or agreement where this has had or is likely to have a Material Adverse Effect with respect to it;
- (c) **(authorisations)** it has in full force and effect each authorisation necessary for it to:
 - (i) enter into this Agreement, to comply with its obligations and exercise its rights under this Agreement, and to allow them to be enforced; and
 - (ii) carry on any business it conducts to the extent that failure to obtain, comply with or maintain that authorisation would be likely to have, a Material Adverse Effect with respect to it;
- (d) **(no Event of Default or default)**
 - (i) no Event of Default with respect to it is continuing; and
 - (ii) it is not in breach of a law or document or agreement binding on or applicable to it or its assets and no event of default, termination or similar event (each however described) exists under any such document or agreement, which has had, or is likely to have, a Material Adverse Effect with respect to it;

- (e) **(solvency)** it is not Insolvent;
- (f) **(Services)** the Services will be provided with due care and skill and in accordance with the Service Standards;
- (g) **(Engagement and Connectivity Guide)** it will comply with the requirements set out in the Engagement and Connectivity Guide at all times when Cabcharge is providing it with access to the System;
- (h) **(compliance with law)** it will comply with all laws, and any Industry Codes, that are related in any way to the Services;
- (i) **(System use)** it will access and use the System in accordance with this Agreement and the Engagement and Connectivity Guide; and
- (j) **(infringement of rights)** use of the System and the provision of the Services to Cabcharge, will not:
 - (i) infringe any person's rights (including Intellectual Property Rights);
 - (ii) constitute a misuse of any person's confidential information; or
 - (iii) result in the Payment Processor or any Related Body Corporate of the Payment Processor breaching any obligation that it owes to any person.

4.2 Representations and warranties by Cabcharge

Cabcharge represents and warrants to the Payment Processor that:

- (a) **(power)** it has power to enter into this Agreement, to comply with its obligations under it and exercise its rights under it;
- (b) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this Agreement does not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets; or
 - (iii) any document or agreement binding on or applicable to it or its assets or constitute a review event, event of default, termination, cash cover requirement, prepayment or similar event (each however described) under any such document or agreement where this has had or is likely to have a Material Adverse Effect with respect to it;
- (c) **(authorisations)** it has in full force and effect each authorisation necessary for it to:
 - (i) enter into this Agreement, to comply with its obligations and exercise its rights under this Agreement, and to allow them to be enforced; and
 - (ii) carry on any business it conducts to the extent that failure to obtain, comply with or maintain that authorisation would be likely to have, a Material Adverse Effect with respect to it;

- (d) **(no Event of Default or default)**
 - (i) no Event of Default with respect to it is continuing; and
 - (ii) it is not in breach of a law or document or agreement binding on or applicable to it or its assets and no event of default, termination or similar event (each however described) exists under any such document or agreement, which has had, or is likely to have, a Material Adverse Effect with respect to it;
- (e) **(solvency)** it is not Insolvent;
- (f) **(System use)** as at the date of this Agreement, the provision of access to the System in accordance with this Agreement will not result in a breach of any law or Industry Code;
- (g) **(infringement of rights)** the provision of access to the System by Cabcharge in accordance with this Agreement will not:
 - (i) infringe any person's rights (including Intellectual Property Rights);
 - (ii) constitute a misuse of any person's confidential information; or
 - (iii) result in Cabcharge or any Related Body Corporate of Cabcharge breaching any obligation that it owes to any person; and
- (h) **(compliance with law)** it will comply with all laws, and any Industry Codes, that are related in any way to providing access to the System.

4.3 Repetition of representations and warranties

The representations and warranties in this clause 4 are taken to be made on the date of this Agreement. The representations and warranties in clauses 4.1(d) to (j) and clauses 4.2(d), (e), (g) and (h) are deemed repeated (by reference to the then current circumstances) on each date on which this Agreement is in force.

Any disclosure against a representation and warranty does not limit a party's rights under this Agreement (including under clause 7 ("Default")).

4.4 Reliance

Each party acknowledges that the other party has entered into this Agreement and:

- (a) Cabcharge provides access to the System; and
- (b) the Payment Processor accesses the System and provides the Services, in reliance on the representations and warranties in this clause 4.

5 Undertakings by the Payment Processor

5.1 Introduction

The Payment Processor agrees to comply with the undertakings set out in this clause 5 unless Cabcharge consents to the non-compliance.

5.2 Information undertakings

The Payment Processor agrees to give Cabcharge the following:

- (a) **(Events of Default)** full details of an Event of Default or Potential Event of Default with respect to it and any step taken or proposed to remedy it;
- (b) **(status certificates)** on request from Cabcharge, a certificate signed by at least one director which states whether an Event of Default or Potential Event of Default is continuing with respect to it and if it is, any step taken or proposed to remedy it;
- (c) **(solvency)** a certificate of solvency signed by a director every 12 months from the date of this Agreement;
- (d) **(notices or orders)** a copy of any notice, order, summons or conviction from, or correspondence with, an authority, involving it which has had or is likely to have a Material Adverse Effect with respect to it;
- (e) **(insurance)** on request from Cabcharge, documentation evidencing that the Payment Processor has the required insurance in place as required by clause 5.3(d) below; and
- (f) **(information)** any document or other information that Cabcharge reasonably requests to enable Cabcharge to evidence compliance by the Payment Processor with the Service Standards.

5.3 General undertakings

The Payment Processor agrees:

- (a) **(authorisations)** to obtain, comply with and maintain each authorisation necessary for it to:
 - (i) enter into this Agreement, to comply with its obligations and exercise its rights under this Agreement and to allow them to be enforced; and
 - (ii) carry on its business as it is now being carried on to the extent that failure to do so would be likely to have, a Material Adverse Effect with respect to it;
- (b) **(comply with laws)** to comply with all laws binding on, or applicable to, it or its assets where failure to comply is likely to have a Material Adverse Effect with respect to it;
- (c) **(conduct of business and assets)**
 - (i) to carry on its business in a proper, orderly and efficient manner and not to cease, or significantly change the general nature of, its business; and
 - (ii) to maintain its assets in good working order and condition (ordinary wear and tear excepted) and correct any defect to the extent that failure to do so would be likely to have a Material Adverse Effect with respect to it; and

- (d) **(insurance)** to obtain, comply with and maintain insurances with a reputable and independent insurer authorised to carry on business in Australia by the Australian Prudential Regulation Authority in the manner and to the extent which is in accordance with prudent business practice having regard to the nature of the business and assets of the Payment Processor (including all insurance required by applicable law).

5.4 Undertakings are continuing obligations

Each undertaking in this clause 5 continues for so long as this Agreement is in force.

6 Undertakings by Cabcharge

6.1 Introduction

Cabcharge agrees to comply with the undertakings set out in this clause 6 unless the Payment Processor consents to the non-compliance.

6.2 Information undertakings

Cabcharge agrees to give the Payment Processor the following:

- (a) **(Events of Default)** full details of an Event of Default or Potential Event of Default with respect to it and any step taken or proposed to remedy it;
- (b) **(status certificates)** on request from the Payment Processor, a certificate signed by 2 of its directors which states whether an Event of Default or Potential Event of Default is continuing with respect to it and if it is, any step taken or proposed to remedy it;
- (c) **(insurance)** on request from the Payment Processor, documentation evidencing that Cabcharge has the required insurance in place as required by clause 6.3(d) below; and
- (d) **(notices or orders)** a copy of any notice, order, summons or conviction from, or correspondence with, an authority, involving it which has had or is likely to have a Material Adverse Effect with respect to it.

6.3 General undertakings

Cabcharge agrees:

- (a) **(authorisations)** to obtain, comply with and maintain each authorisation necessary for it to:
 - (i) enter into this Agreement, to comply with its obligations and exercise its rights under this Agreement and to allow them to be enforced; and
 - (ii) carry on its business as it is now being carried on to the extent that failure to do so would be likely to have, a Material Adverse Effect with respect to it;
- (b) **(comply with laws)** to comply with all laws binding on, or applicable to, it or its assets where failure to comply is likely to have a Material Adverse Effect with respect to it;
- (c) **(conduct of business and assets)**

- (i) to carry on its business in a proper, orderly and efficient manner and not to cease, or significantly change the general nature of, its business; and
- (ii) to maintain its assets in good working order and condition (ordinary wear and tear excepted) and correct any defect to the extent that failure to do so would be likely to have a Material Adverse Effect with respect to it;
- (d) **(insurance)** to obtain, comply with and maintain insurances with a reputable and independent insurer authorised to carry on business in Australia by the Australian Prudential Regulation Authority in the manner and to the extent which is in accordance with prudent business practice having regard to the nature of the business and assets of Cabcharge (including all insurance required by applicable law).

6.4 Undertakings are continuing obligations

Each undertaking in this clause 6 continues for so long as this Agreement is in force.

7 Default

7.1 Event of Default

Each of the following is the occurrence of an Event of Default in respect of a party (and in respect of paragraph (a), that party being Cabcharge only):

- (a) **(non-payment of Fee or Hiring Payments)** Cabcharge fails to pay the Payment Processor any Fees and Hiring Payments due and owing to the Payment Processor within five (5) Business Days of being notified by the Payment Processor;
- (b) **(non-compliance with obligations)** the party does not comply with any obligation under this Agreement and, if the non-compliance can be remedied, does not remedy the non-compliance within 30 calendar days of prior written notice of such breach, or the party becoming aware of the failure to comply (whichever is the earlier);
- (c) **(misrepresentation)** a representation, warranty or statement made, or taken to be made, by or on behalf of the party that is incorrect or misleading when made or taken to be made and, if the circumstances giving rise to the misrepresentation can be remedied, the party does not remedy them within 30 calendar days of prior written notice of such breach, or the party becoming aware of the relevant circumstances (whichever is the earlier);
- (d) **(Material Adverse Effect)** an event occurs and continues for seven (7) days which has, or is likely to have (or a series of events occur which, together, have or are likely to have) a Material Adverse Effect with respect to the party; or
- (e) **(Insolvent)** the party is Insolvent.

8 Confidentiality and Privacy

8.1 Treatment of Confidential Information

Each party acknowledges that the Confidential Information of the other parties is valuable to the other party. Each party undertakes to keep the Confidential Information of the other parties secret and to protect and preserve the confidential nature and secrecy of that Confidential Information.

8.2 Use of Confidential Information

A Recipient may only use the Confidential Information of the Discloser for the purposes of performing the Recipient's obligations or exercising the Recipient's rights under this Agreement.

8.3 Disclosure of Confidential Information

A Recipient may not disclose Confidential Information of the Discloser to any person except:

- (a) representatives, legal advisers, auditors and other consultants of the Recipient who require it for the purposes of this Agreement;
- (b) with the prior written consent of the Discloser;
- (c) if the Recipient is required to do so by law or a stock exchange; or
- (d) if the Recipient is required to do so in connection with legal proceedings relating to this Agreement.

8.4 Disclosure by Recipient

A Recipient disclosing information under clause 8.3(a) or (b) ("Disclosure of Confidential Information") must ensure that persons receiving Confidential Information from it:

- (a) do not disclose the information except in the circumstances permitted in clause 8.3 ("Disclosure of Confidential Information"); and
- (b) do not do or omit to do anything which if done or omitted to be done by the Recipient, would be a breach of the Recipient's obligations under this Agreement or an obligation of confidence owed to the Discloser or to any of its Related Bodies Corporate.

8.5 Return of Confidential Information

Subject to clause 8.6 ("Exceptions"), on the Discloser's request, the Recipient must, subject to (b), immediately deliver to the Discloser all documents or other materials containing or referring to the Discloser's Confidential Information which are:

- (a) in the Recipient's possession, power or control; or
- (b) in the possession, power or control of persons who have received Confidential Information from the Recipient under clause 8.3(a) or 8.3(b) ("Disclosure of Confidential Information").

8.6 Exceptions

The obligation in clause 8.5 ("Return of Confidential Information") does not apply to Confidential Information of the Discloser that the Recipient requires in order to perform its obligations under this Agreement or is otherwise entitled to retain.

8.7 Privacy

If, as a result of this Agreement, provision of the Services, or use of the System, the Payment Processor is able to access any information about identifiable individuals held by or on behalf of Cabcharge, then the Payment Processor:

- (a) must comply with the *Privacy Act 1988 (Cwth)* and all other applicable privacy laws and such other data protection laws as may be in force from

time to time which regulate the collection, storage, use and disclosure of information, as if it were regulated by these laws;

- (b) must comply with any privacy code or policy which has been adopted by Cabcharge (copies available on request) as if it were bound by that code or policy;
- (c) must comply with all Industry Codes and the PCI DSS which regulates the collection, storage, use and disclosure of information;
- (d) must comply with any direction of Cabcharge that is consistent with the laws, codes and policies referred to in clauses 8.7(a) to (c) above;
- (e) must promptly notify Cabcharge of any request made by such an individual for access to the information;
- (f) must co-operate with Cabcharge in the resolution of any complaint under, or relating to, any of the laws, codes or policies referred to in clauses 8.7(a) to (c) above; and
- (g) indemnifies Cabcharge and its officers, employees, agents and contractors against all loss, damage, injury, claim, demand, cost or expense (including legal fees and expenses) that any or all of them suffer or incur as a result of any breach of clauses 8.7(a) to (f) above.

9 Intellectual Property

Nothing in this Agreement shall assign, transfer or act to vest in the Payment Processor any Intellectual Property Rights in the System or any Intellectual Property Rights in any adaptations, modifications or enhancements of the System.

10 Taxes

10.1 Taxes

Each party shall be responsible for their Taxes arising from or relating to this Agreement.

10.2 GST

The parties agree that:

- (a) unless expressly stated otherwise, the consideration specified in this Agreement does not include any amount of GST;
- (b) if a supply under this Agreement is subject to GST, and the consideration payable or to be provided for the supply is not expressed to include GST, the party receiving the supply must pay to the party making the supply an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate;
- (c) the additional amount is payable at the same time as the consideration for the supply is payable or is to be provided, however the additional amount need not be paid until the party making the supply gives the party receiving the supply a Tax Invoice;
- (d) if the additional amount differs from the amount of GST payable by the party making the supply, the parties must adjust the additional amount; and

- (e) if a party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

11 Term and Termination

11.1 Term

This Agreement commences on the date shown in the Details and continues until it is terminated.

11.2 Termination by either party

Without limiting the rights under clause 11.3 below, Cabcharge or the Payment Processor may terminate this Agreement on providing no less than three (3) months' notice in writing to the other parties, provided that such termination may not occur earlier than the third anniversary of the date on which Cabcharge allows the Payment Processor to access and use the System.

11.3 Termination for an Event of Default

- (a) Subject to sub-clause (c) below, Cabcharge or the Payment Processor may immediately terminate this Agreement by notice in writing to the other party if an Event of Default occurs in respect of the other and is continuing.
- (b) Cabcharge may terminate this Agreement with at least 30 days' notice to the Payment Processor if a law, regulation or Industry Code is introduced, or an existing law, regulation or Industry Code is amended, to prohibit Cabcharge from charging the Cabcharge Service Fee.
- (c) Cabcharge cannot terminate this Agreement, for an Event of Default under clause 7.1(b):
 - (i) within 90 days of the date on which Cabcharge first allows the Payment Processor to access and use the System; and
 - (ii) at all other times, if the Payment Processor is no less than 95% compliant with the GPS and tolling requirements in the Engagement and Connectivity Guide on a weekly basis for each week.

11.4 Effect of termination

- (a) Termination of this Agreement for any reason shall not affect the rights of either Party to seek damages for any breach of this Agreement which occurred before such termination, including (if applicable) damages arising from any breach which gave rise to termination.
- (b) Upon termination of this Agreement, subject to clause 16.3 ("Set-off"), all Fees and Hiring Payments in respect of Services provided on or prior to the date of termination shall become immediately due and payable.

11.5 Mitigation

Each Party agrees to take all reasonable action to mitigate any loss it suffers or incurs in connection with the termination of all or part of this Agreement.

12 Amendments

12.1 Cabcharge Cards

The parties agree that Cabcharge may in its absolute discretion and following three months notice in writing to the Payment Processor:

- (a) approve any new or updated version of a Cabcharge Card or any other instrument that enables a Cabcharge accountholder to incur a charge on its account through the use of a payment terminal in a Taxi from time to time (a **New Cabcharge Card**); or
- (b) remove a Cabcharge Card so that such payment card ceases to be a Cabcharge Card either in all jurisdictions or in a particular jurisdiction.

Following notice regarding a New Cabcharge Card, Cabcharge will provide the Payment Processor with any reasonable technological support (including any relevant technical standards and documentation) requested by the Payment Processor (including for the benefit of the Acquirer in connection with services provided by the Acquirer in accordance with this Agreement) to enable the Payment Processor (including through the use of the services of the Acquirer in accordance with this Agreement) to provide the Services in relation to the New Cabcharge Card. For the avoidance of doubt, such support must be provided directly to the Acquirer if so requested by the Payment Processor.

For the avoidance of doubt, any New Cabcharge Card will be a Cabcharge Card for the purposes of this Agreement until, and without limiting its right to do so, the Payment Processor removes it from the definition of Cabcharge Card by giving the notice referred to in the following paragraph.

The parties agree that the Payment Processor is not obliged to provide the Services in connection with any New Cabcharge Card following the date of this Agreement. If the Payment Processor does not intend to provide the Services in connection with any New Cabcharge Card it must notify Cabcharge in writing within sixty (60) Business Days of receipt of the notice in writing from Cabcharge. However, the Payment Processor may choose to provide the Services in relation to a New Cabcharge Card at any time after receiving notice from Cabcharge and may later provide the Services in connection with such New Cabcharge Card despite any prior notice to Cabcharge of the contrary, provided it informs Cabcharge in writing at such time.

12.2 Amendments to Engagement and Connectivity Guide or Service Standards

Cabcharge may update the Engagement and Connectivity Guide or the Service Standards (acting in good faith and in a commercially reasonable manner) from time to time.

An update to the Engagement and Connectivity Guide or Service Standards is effective on:

- (a) where the update is necessary to urgently protect the integrity or security of the System or to allow the System to continue to operate (excluding issues relating to GPS processing or taxi meter integration), no later than three (3) days after Cabcharge gives the Payment Processor notice of the update;
- (b) where the update is due to a change in any law or Industry Code, the date on which that change takes effect;

- (c) where the update is due to a change required by a third party that provides services directly to Cabcharge in relation to the System, the date on which that third party states that the change takes effect; or
- (d) in all other circumstances six (6) months after Cabcharge gives the Payment Processor notice of the change.

Cabcharge will give the Payment Processor as much prior notice of any update as is reasonably practicable, and which notice will be, in respect of the circumstances referred to in paragraph (a), (b) or (c) above, given not later than the date on which Cabcharge has, or would have after due enquiry, notice of the change or other circumstances giving rise to the change.

Following notice of the update to the Engagement and Connectivity Guide or Service Standards, Cabcharge will provide all reasonable technological support requested by the Payment Processor (including for the benefit of the Acquirer in connection with services provided by the Acquirer in accordance with this Agreement and directly to the Acquirer if so requested by the Payment Processor, and further including any relevant technical standards and documentation) to enable the Payment Processor (including through the services provided by the Acquirer in accordance with this Agreement) to comply with the requirements to provide the Services at all times in accordance with the updated Engagement and Connectivity Guide or Service Standards.

Notwithstanding any other provision of this Agreement:

- (a) the Payment Processor will not be in default, and an Event of Default will not occur, under this Agreement (and Cabcharge has no right to terminate the Agreement under clause 11.3); and
- (b) Cabcharge has no right to refuse or withdraw access to the System under clause 1.2,

solely for the reason that the Payment Processor is not complying with an update to the Engagement and Connectivity Guide or is not meeting updated Service Standards, if the Payment Processor is taking reasonable steps to amend its practices to enable it to comply with the update to the Engagement and Connectivity Guide or Service Standards (and for the avoidance of doubt including where such practices require participation by the Acquirer).

13 Notices

13.1 Form

Unless expressly stated otherwise in this Agreement, all notices, certificates, consents, approvals, waivers and other communications under this Agreement ("**Notices**") must be in writing, signed by the sender (if an individual) or an authorised officer of the sender and marked for the attention of the person shown in the Details or, if the recipient has notified otherwise, then marked for attention in the last way notified.

13.2 Delivery

Notices must be:

- (a) left at the address shown in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address shown in the Details; or
- (c) sent by fax to the fax number shown in the Details.

If the intended recipient has notified a change of postal address or changed fax number, then the communications must be to that address or number.

13.3 When effective

Notices take effect from the time they are received unless a later time is specified.

13.4 Receipt

Notices are taken to have been received:

- (a) if sent by post, three days after posting (or seven days after posting if sent to or from a place outside Australia); and
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent.

14 Assignment and subcontracting

14.1 Assignment

- (a) The Payment Processor may not assign or otherwise deal with any of its rights or obligations under this Agreement without Cabcharge's prior consent.
- (b) Cabcharge may novate, or assign or otherwise deal with any of its rights or obligations under, this Agreement by notice to the Payment Processor and the Payment Processor must immediately execute any documents necessary to give effect to this.

14.2 Subcontracting

- (a) Subject to subparagraph (b), the Payment Processor may not subcontract the performance of any of their obligations under this Agreement without Cabcharge's prior written consent, not to be unreasonably withheld.
- (b) The Payment Processor may use the services of the Acquirer for the purposes of the Payment Processor discharging any obligations (or exercising any rights) of the Payment Processor under this Agreement, including the building of the interchange link. Specific references in this Agreement to the use of the services of the Acquirer is not to limit the rights of the Payment Processor under this subparagraph (b).
- (c) The Payment Processor must procure that any subcontractor does not do or omit to do anything which if done or omitted to be done by the Payment Processor, would be a breach of the Payment Processor's obligations under this Agreement including, but not limited to, any obligations in respect of any Confidential Information and Personal Information.
- (d) The Payment Processor remains responsible for the performance of any obligations that it subcontracts.

15 Dispute resolution

15.1 Injunctive or interim relief

Nothing in this clause prevents a party seeking urgent injunctive or similar interim relief from a court.

15.2 Negotiation

Any party ("**Initiating Party**") claiming that a Dispute has arisen must give the other party ("**Recipient Party**") a notice setting out brief details of the Dispute ("**Dispute Notice**"). Within five (5) Business Days of service of a Dispute Notice, the Recipient Party must give the Initiating Party a notice setting out brief details of the Recipient Party's position on the Dispute ("**Reply Notice**").

If Dispute and Reply Notices are given, the parties must make representatives with authority to settle the Dispute available for the purpose of meeting in an effort to resolve the Dispute. At least one meeting of the authorised representatives must take place within ten (10) Business Days of service of a Reply Notice.

If the authorised representatives are unable to resolve the Dispute within ten (10) Business Days after meeting in accordance with the paragraph above, the Initiating Party will be entitled to proceed immediately with resolving the Dispute in accordance with the remainder of this clause.

If the Recipient Party does not give a Reply Notice or make its authorised representatives available for a meeting within the time periods contained in this clause, the Initiating Party will be entitled to proceed immediately with resolving the Dispute in accordance with the remainder of this clause.

15.3 Mediation

If the Dispute is not resolved in accordance with clause 15.2 above, the Dispute must be submitted to mediation in accordance with the ACDC Guidelines for Commercial Mediation. The mediation is to be conducted in Sydney.

15.4 Appointment of mediator

The parties will agree on the appointment of mediator. If the parties do not agree on the mediator to be appointed within ten (10) Business Days of either party referring the Dispute to mediation, then the mediator is to be appointed by the Australian Commercial Disputes Centre Limited in accordance with the ACDC Guidelines for Commercial Mediation.

15.5 Termination of mediation

The mediation process will terminate within thirty (30) Business Days of the appointment of the mediator, upon which either party will be entitled to commence court proceedings in relation to the Dispute.

16 General

16.1 Entire agreement

This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior understandings, arrangements and agreements between the parties.

16.2 Variation and waiver

A provision of this Agreement or a right created under it, may not be varied or waived except in writing, signed by the party or parties to be bound.

16.3 Set-off

Cabcharge may set off any amount owing by Cabcharge to the Payment Processor (whether or not due for payment) against any amount due for payment by the Payment Processor to Cabcharge in connection with this Agreement.

Cabcharge may do anything necessary to effect any set-off under this clause (including varying the date for payment of any amount owing by Cabcharge to the Payment Processor and making currency exchanges). This clause applies despite any other agreement between the Payment Processor and Cabcharge.

16.4 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Agreement expressly states otherwise.

16.5 Partial exercise of rights

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

16.6 Approvals, waivers and consents

By giving its approval, waiver or consent, a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent, waiver or approval.

16.7 Remedies cumulative

The rights and remedies provided in this Agreement are in addition to other rights and remedies given by law independently of this Agreement.

16.8 No merger

The warranties in this Agreement do not merge under any circumstances.

16.9 Rights and obligations are unaffected

Rights given to the parties under this Agreement and the parties' liabilities under it are not affected by anything which might otherwise affect them by law.

16.10 Indemnities

The indemnities in this Agreement are continuing obligations, independent from the other obligations of the Parties under this Agreement and continue after this Agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Agreement.

16.11 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it.

16.12 Counterparts

This Agreement may consist of a number of copies, each signed by one or more parties to this Agreement. If so, the signed copies are treated as making up the one document.

16.13 Survival

Clauses 4.1(h), 4.1(i), 4.1(j) ("Representations and warranties by the Payment Processor"), 4.2(g), 4.2(h) ("Representations and warranties by Cabcharge"), 8 ("Confidentiality and Privacy"), 10.1 ("Taxes"), 10.2 ("GST"), 11.4 ("Effect of Termination"), 14.1 ("Assignment"), 14.2 ("Sub contracting"), 16 ("General"), 17 ("Governing Law") and 18 ("Interpretation") survive the termination (for any reason) of this Agreement, as do any rights and remedies that have accrued prior to termination.

17 Governing Law

This Agreement is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

18 Interpretation

18.1 Definitions

These meanings apply unless the contrary intention appears:

Amount of the Consideration means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST Exclusive Market Value of that consideration as reasonably determined by the party making the supply.

Approved Transaction means a Cabcharge Card Transaction that the Payment Processor receives approval from Cabcharge to accept.

Acquirer means the entity appointed by the Payment Processor (and any replacement Acquirer) to provide any services requested by the Payment Processor in order for the Payment Processor to provide the Services under this Agreement.

AUD means the lawful currency of Australia.

Business Day means a day (not being a Saturday, Sunday or public holiday in that place) on which banks are open for general banking business in Sydney.

Business Hours means the period between 9.00am and 5.00pm on a Business Day.

Cabcharge Card means the following products issued by Cabcharge:

- (a) FASTcard;
- (b) FASTeTICKETs;
- (c) gift cards; and
- (d) any New Cabcharge Card

Cabcharge Service Fee means the amount which Cabcharge charges to a Cabcharge accountholder for the provision of services by Cabcharge to the accountholder, including, but not limited to, the provision of reports and credit to secure release of the obligation to pay the Driver.

Cabcharge Card Transaction means a transaction initiated through the use of a Cabcharge Card through a Payment Processor Terminal.

Confidential Information means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, disclosed by a party, its Related Body Corporate or representative to the other party, its Related Body Corporate or representative before, on or after the date of this Agreement relating to the business, technology or other affairs of the discloser of the information or its Related Body Corporate, including but not limited to:

- (a) the procedures and methods used to operate the System;
- (b) the names and locations of Cabcharge clients;
- (c) the Engagement and Connectivity Guide;
- (d) the frequency of use and the locations in which Cabcharge clients use the Services;
- (e) the financial relationship between Cabcharge and its clients;
- (f) the account and card names and numbers and other relevant card details which is the property of the card holder;
- (g) the names and locations of Drivers and Operators; and
- (h) terminal numbers used by the Drivers,

but does not include information:

- (a) which is in or becomes part of the public domain other than through breach of this Agreement or an obligation of confidence owed to the Discloser or Related Body Corporate;
- (b) which the Recipient can prove by contemporaneous written documentation was already known to it at the time of receipt from the Discloser or its Related Body Corporate or Representative (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) which the Recipient acquires from a source other than the Discloser, its Related Body Corporate or representative where such source is entitled to disclose it.

Controller has the meaning it has in the Corporations Act.

Corporations Act means the *Corporations Act 2001 (Cwlth)*.

Details means the section in this Agreement headed "Details".

Discloser means the party disclosing Confidential Information.

Dispute includes any dispute, controversy, difference or claim arising out of or in connection with this Agreement or the subject matter of this Agreement, including any question concerning its formation, validity, interpretation, performance, breach and termination.

Driver means the driver of any Taxi, or any other person, who is authorised by the Payment Processor to accept a Cabcharge Card as a means of releasing the passenger from their obligation to pay for services supplied by that Driver.

Electronic Transmission means an electronic transmission from a Payment Processor Terminal which is routed to Cabcharge and which contains all necessary information regarding a Hiring and which conforms with all other requirements set out in this Agreement and the Engagement and Connectivity Guide.

Engagement and Connectivity Guide means the Engagement and Connectivity Guide and includes the documents stated in the Engagement and Connectivity Guide as being included in it under the heading "Documentation

Map” as provided by Cabcharge to the Payment Processor and as may be amended, varied, supplemented or replaced from time to time.

Event of Default means an event or circumstance so described in clause 7.

Face Value means the amount, in AUD, representing:

- (a) the total fare for a Hiring including any toll charges special levies or gratuities but excluding the Cabcharge Service Fee; and
- (b) if GST has been included in such fare and in the Hiring relating to such fare and such GST is payable by the relevant accountholder to Cabcharge and is payable by Cabcharge to the Payment Processor under the GST Act, including any GST on such total fare.

FASTeTICKET means a pre-encoded ticket issued by Cabcharge capable of being processed in a contactless manner.

Fees means the fees set out in clause 2.1 (“Payment Processing Fee”).

Force Majeure Event means any cause outside the reasonable control of Cabcharge, and which could not have been prevented or avoided by Cabcharge taking all reasonable steps.

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

GST means the tax imposed by the GST Act and the related imposition Acts of the Commonwealth.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*, as amended from time to time.

GST Exclusive Market Value has the meaning given to it in the GST Act.

Hiring means a hiring of a Taxi fitted with a Payment Processor Terminal and for which a Cabcharge Card is presented by the passenger and accepted by the Driver in order to release the passenger from the obligation to pay the fare. There may only be one Hiring for any single journey.

Hiring Payment means the payments set out in clause 2.2 (“Hiring Payments”).

Industry Code means the rules, regulations, procedures and any other conditions or requirements which apply to participation in any payment clearing and settlement system necessary to provide the Services.

Input Tax Credit has the meaning given to it in the GST Act.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it has had a Controller appointed, or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case,

other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement);

- (d) an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) it is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this Agreement reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any or all of (a) to (g) happens in connection with that person under the law of any jurisdiction.

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Invalid Transaction means a Cabcharge Card Transaction:

- (a) that relates to a Hiring occurring outside the dates (if any) indicated as the period of validity on the face of the Cabcharge Card;
- (b) the Face Value of which is in excess of any limits for the Cabcharge Card as advised by Cabcharge from time to time;
- (c) for which any paper receipt printed by a Payment Processor Terminal bears a signature other than the signature of the relevant accountholder or cardholder;
- (d) arising from the use of a Cabcharge Card which has not been presented by the relevant accountholder or cardholder in satisfaction for the fare of a genuine Hiring;
- (e) arising from the use of a Cabcharge Card which is not the subject of approval from Cabcharge in real-time and has been stored for later transmission and is subsequently rejected or declined by Cabcharge;
- (f) which is fraudulent due to the fraudulent actions of the Driver or the Payment Processor; or
- (g) which records a Hiring which has also been recorded on another Electronic Transmission (in which case the second and subsequent Hirings only are to be invalid).

Material Adverse Effect means a material adverse effect on:

- (a) the ability of a party to comply with its obligations under this Agreement; or
- (b) the rights and remedies of the party under this Agreement; or

- (c) the business, operation, property, condition (financial or otherwise), or prospects of the party; or
- (d) the validity or enforceability of this Agreement.

For the avoidance of doubt, for the purposes of this Agreement, the introduction of any law or regulation that limits the amount of the Cabcharge Service Fee or the variation of any such existing law or regulation does not have a Material Adverse Effect on Cabcharge.

Payment Date means [*insert payment dates*] (or, if that is not a Business Day, on the next Business Day).

Payment Processor Terminal means an electronic payment terminal supplied by the Payment Processor to a Driver comprising a pin-pad, communication unit, printer, radio antennae and interconnecting cabling between these and where applicable other in-vehicle equipment capable of accepting and processing Cabcharge Cards.

Personal Information has the meaning set out in the *Privacy Act 1988* (Cth).

PCI DSS means Payment Card Industry Data Security Standards which sets forth standards of security, responsibility, liability and controls governing the acceptable standards for all organisations, companies, staff, and all persons handling and privy to charge, credit, debit or stored value cards details for the purpose of processing purchases and payments of any nature.

Potential Event of Default means an event or circumstance described in clause 7 ("Default") which, with the giving of notice, lapse of time or fulfilment of any condition, would be likely to become an Event of Default.

Privacy Law means all legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to the Personal Information including but not limited to the *Privacy Act 1988* (Cth).

Receiver includes a receiver or receiver and manager.

Recipient means the party receiving Confidential Information.

Regulator means any regulator of Cabcharge or the Payment Processor including:

- (a) any government or governmental, semi-governmental or judicial entity or authority;
- (b) any minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; or
- (c) any regulatory organisation established under any law.

Related Body Corporate has the meaning it has in the Corporations Act.

Service Standards means the service standards referred to in Schedule 2 ("Service Standards").

Services means the services to be provided by the Payment Processor to Cabcharge as set out in Schedule 1 ("Services").

System means:

- (a) a combination of software, equipment, documentation (including the Engagement and Connectivity Guide) and services which produce a system that allows access to and use of the electronic payment systems owned and operated by Cabcharge to facilitate the provision of the Services by the Payment Processor; and
- (b) any changes (which to avoid doubt include additions) to the software, equipment, documentation and services referred to in paragraph (a) above.

Tax Invoice has the meaning given to it in the GST Act.

Taxes means taxes, levies, imposts, charges and duties (including, stamp and transaction duties) imposed by any Government Agency, together with any related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, the overall net income of Cabcharge, but excluding GST.

Taxi means a motor vehicle licensed as a taxi-cab under the laws and regulations of the jurisdiction in which it operates and includes a private hire vehicle and water taxi, and any other mode of transport specified by Cabcharge from time to time.

18.2 References to certain general terms

Unless the contrary intention appears, a reference in this Agreement to:

- (a) **(variation or replacement)** a document (including this Agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, Schedule, Annexure, Attachment or Exhibit is a reference to a clause in, or a Schedule, Annexure, Attachment or Exhibit to, this Agreement;
- (c) **(references to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors and substitutes (including, persons taking by novation) and assigns;
- (h) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) **(dollars)** an amount of money is a reference to the lawful currency of Australia;

- (j) **(calculation of time)** a period of time that dates from a given day or the day of an act or event is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to a calendar day and is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind;
- (m) **(next day)** if an act under this Agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day; and
- (n) **(time of day)** time is a reference to Sydney time.

18.3 Headings

Headings are included for convenience only and are not to affect the interpretation of this Agreement.

EXECUTED as an agreement

Payment Processing Agreement

Schedule 1 – Services

1 Services

The following constitute the Services to be provided by the Payment Processor (including through the use of the services of the Acquirer in accordance with this Agreement) to Cabcharge:

1.1 Receipt and routing of Electronic Transmissions

- (a) The Payment Processor will receive Electronic Transmissions in the manner and format, and containing the information set out in the Engagement and Connectivity Guide.
- (b) On receipt of an Electronic Transmission, the Payment Processor will comply with the procedures and processes set out in the Engagement and Connectivity Guide to route each Electronic Transmission to Cabcharge so that Cabcharge can perform all relevant functions including, matching, verifying, approving, rejecting or declining the Electronic Transmission.
- (c) The Payment Processor will comply with the procedures and processes set forth in the Engagement and Connectivity Guide to route each response from Cabcharge to the relevant Payment Processor Terminal.
- (d) If the response from Cabcharge is to approve the acceptance of the Cabcharge Card the Payment Processor will release on behalf of Cabcharge the person or persons presenting the Cabcharge Card from payment of the fare for the Hiring.

1.2 Reimbursement of Drivers

The Payment Processor will pay each Driver the amount agreed with that Driver for an Approved Transaction.

1.3 Lost, cancelled and stolen Cabcharge Cards and fraud

- (a) The Payment Processor will use reasonable endeavours to comply with the directions of Cabcharge issued from time to time to prevent use of Cabcharge Cards which Cabcharge has notified the Payment Processor have been stolen from or lost by the holder to whom they were issued, which have been cancelled by Cabcharge or which relate to accounts which have been cancelled.
- (b) The Payment Processor will use its reasonable endeavours to assist Cabcharge in recovering stolen or lost Cabcharge Cards and will co-operate and assist in detecting and eliminating fraudulent use of Cabcharge Cards and alteration of Cabcharge Cards and in identifying any person who is a party to such conduct.

1.4 Accuracy and security of data

- (a) The Payment Processor will check the information and data provided to it through Electronic Transmissions and provided by it to Cabcharge and will notify Cabcharge immediately if it becomes aware that any such information or data is incorrect or incomplete.

- (b) The Payment Processor is responsible for managing the information and data transmitted to it by an Electronic Transmission, and for ensuring that the information and data has been successfully delivered to Cabcharge in accordance with the Engagement and Connectivity Guide.
- (c) The Payment Processor acknowledges that Cabcharge is not responsible for ensuring the security of data which is transmitted between the Payment Processor, any Driver or any Payment Processor Terminal.

Payment Processing Agreement

Schedule 2 - Service Standards

1 Service Standards

Each of the following comprise a Service Standard:

1.1 Compliance with the Engagement and Connectivity Guide

The Payment Processor must have adequate systems and processes to provide the Services in a manner that meets the requirements set out in the Engagement and Connectivity Guide, including maintaining a suitable computer system operated by or on behalf of it and internal systems and processes which permits:

- (a) the processing, accounting, reporting and payment of Electronic Transmissions; and
- (b) the processing, accounting, reporting and dissemination of information relating to each Hiring to Cabcharge, including the details of each Electronic Transmission,

each in accordance with the specifications set forth in the Engagement and Connectivity Guide.

1.2 Acceptance of Cabcharge Cards

The Payment Processor must:

- (a) not state or set a minimum or maximum amount for a Cabcharge Card Transaction without Cabcharge's prior written consent;
- (b) if a signature is required by Cabcharge, require Drivers to verify that the signature (if any) on a Cabcharge Card matches the signature on the transaction receipt; and
- (c) require Drivers to give the cardholder a copy of the transaction receipt which complies with the requirements set out in the Engagement and Connectivity Guide and any applicable law or regulation, immediately after completing the transaction.

1.3 Fraud detection

The Payment Processor must:

- (a) use reasonable care to detect fraudulent transactions; and
- (b) notify Cabcharge if it becomes aware of or suspects fraud on the part of a cardholder or a Driver.

The Payment Processor must not allow a Driver to use the Payment Processor's Terminals to accept Cabcharge Cards if Cabcharge notifies it that Cabcharge has determined, acting reasonably, that the Cabcharge Card may be being used fraudulently.

1.4 Security Requirements and Obligations in relation to Personal Information

The Payment Processor must ensure that it has and continues to have security procedures in place which comply with Cabcharge's data security requirements from time to time, Industry Codes, the PCI DSS and all applicable law and regulation as detailed in the Engagement and Connectivity Guide.

When collecting Personal Information, the Payment Processor:

- (a) must comply with:
 - (i) any applicable Privacy Law;
 - (ii) Cabcharge's security policies and procedures; and
 - (iii) any other reasonable privacy requirement notified by Cabcharge in writing;
- (b) must:
 - (i) use Personal Information collected only for the purpose of fulfilling the obligations under this Agreement;
 - (ii) ensure third parties do not gain online or physical access to Personal Information without Cabcharge's prior consent in writing;
 - (iii) restrict access to the Personal Information to employees who need to access the Personal Information to fulfil its obligations under this Agreement, unless Cabcharge otherwise consents;
 - (iv) ensure all access to Personal Information, including privileged access, is:
 - (A) subject to formal authorised access provisioning and governance procedures, which the Payment Processor must implement in accordance with Cabcharge's directions from time to time; and
 - (B) protected through the utilisation of authentication via a password of a minimum complexity and valid duration in accordance with applicable industry standards (as approved by Cabcharge);
 - (v) ensure all access to Personal Information by any staff which traverses networks (including the internet) that have not been subject to appropriate risk assessment and approval by Cabcharge is:
 - (A) encrypted in accordance with Cabcharge's data encryption standards; and
 - (B) protected through the utilisation of multi-factor authentication, requiring both a username and password and a physical or electronic token;
 - (vi) ensure that its data processing equipment and operating systems are located within secure and robust facilities to:
 - (A) minimise the risk of loss or unauthorised access to Personal Information due to environmental and/or human threats and hazards; and
 - (B) protect the Personal Information against the introduction of any computer program virus or other destructive code or device, whether the Personal Information is at rest, in use or in transit;

- (vii) ensure that all of its computer systems have a strong and up to date network security system and firewalls to prevent unauthorised network access.
- (viii) take all reasonable steps to ensure that the Personal Information is protected against misuse and loss, or unauthorised access, modification or disclosure, including:
 - (A) undertaking any training as may be required; and
 - (B) obtaining a written agreement from any third party to whom the Personal Information is disclosed, to comply with all Privacy laws and provisions having the same effect as this clause;
- (ix) not do anything with the Personal Information that will cause Cabcharge to breach any Privacy Law.
- (x) ensure that Personal Information is securely destroyed once it is no longer needed; and
- (xi) implement any changed or additional security requirements, measures or controls as may be reasonably requested by Cabcharge from time to time.

1.5 Reimbursement of Drivers

The Payment Processor must have adequate systems in order to pay each Driver the amount agreed with that Driver for an Approved Transaction.

1.6 Limitation of Cabcharge Service Fee

- (a) The Payment Processor must not impose any fee or charge or engage in any act or activity in connection with a Hiring which would cause Cabcharge, by charging the relevant accountholder the Cabcharge Service Fee in connection with such Hiring, to breach any applicable law or regulation applicable to such Hiring.
- (b) The Payment Processor must not impose any fee or charge on a Driver in an amount which when aggregated with the Cabcharge Service Fee would cause Cabcharge to breach any limit on Taxi surcharges under any applicable law or regulation.

1.7 Records

Without limiting any other provision of this Agreement, the Payment Processor must ensure that all financial and operational records within the Payment Processor's possession, custody or control relating to a Hiring or this Agreement and which the Payment Processor is required by law or regulation to store, and any records in relation to the Services, are stored and maintained in an accessible and secure electronic format for a period of at least seven (7) years, or longer if required by any law or regulation. The Payment Processor must provide, within a commercially reasonable time following notice, electronic copies of or access to such records upon request by Cabcharge.

1.8 Acquirer

For the avoidance of doubt, any Service Standard may be met by the Payment Processor through the use of the services of the Acquirer in accordance with this Agreement.

Signing page

DATED: _____

EXECUTED by CABCHARGE
AUSTRALIA LTD. in accordance with
section 127(1) of the Corporations Act
2001 (Cwlth) by authority of its
directors:

.....
Signature of director

.....
Name of director (block letters)

.....
Signature of director/company
secretary*

*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)

*delete whichever is not applicable

EXECUTED by [PAYMENT
PROCESSOR] in accordance with
section 127(1) of the Corporations Act
2001 (Cwlth) by authority of its
directors:

.....
Signature of director

.....
Name of director (block letters)

.....
Signature of director/company
secretary*

*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)

*delete whichever is not applicable

Annexure B: Standard Confidentiality Agreement



#insert name of recipient of
confidential information#
#insert title of recipient#
#insert employer of recipient#
#insert address of recipient of
confidential information#

#insert date#

Dear #insert name#

Confidentiality Deed

We understand that you are #insert title of recipient of confidential information# of #insert name of employer# ("you").

This letter sets out the requirements of Cabcharge Australia Limited ACN 001 958 390 ("us" or "we" and includes any of our Related Bodies Corporate) in relation to Confidential Information or any other information to be disclosed or otherwise made available to you in relation to you seeking access to Cabcharge's payment processing system ("**Approved Purpose**").

In consideration of the Confidential Information being disclosed to you, you agree that:

- 1 **Confidential Information** means all information (regardless of its form) disclosed or otherwise made available by us or our Representatives to you (before, on or after the date of this deed), for or in connection with the Approved Purpose, which:
 - (a) is marked or otherwise designated as being proprietary or confidential to us;
 - (b) is confidential to a third party to whom we owe an obligation of confidence;
 - (c) in the circumstances surrounding disclosure or because of the nature of the information, ought in good faith to be treated as confidential; or
 - (d) is derived or produced partly or wholly from such information,but excludes information which:
 - (a) is in or becomes part of the public domain otherwise than through a breach of this deed or an obligation of confidentiality owed to us, one of our Representatives or a third party;
 - (b) you can prove by contemporaneous written documentation was already known to you at the time of disclosure by us or any of our Representatives (unless such knowledge arose from disclosure of information in breach of an obligation owed to or by a third party); or
 - (c) you acquired from a third party entitled to disclose it.

- 2 **Personal Information** has the meaning given in the Privacy Act 1988 (Cwlth).
- 3 **Privacy Laws** means the Privacy Act 1988 (Cwlth) and any other legally binding requirement under Australian law, industry code, policy or statement relating to the handling of Personal Information.
- 4 **Representative** of a party includes a Related Body Corporate of the party and an employee, agent, auditor, or adviser of that party or of a Related Body Corporate of that party.
- 5 **Related Body Corporate** has the meaning given in the Corporations Act 2001 (Cwlth).
- 6 You must maintain the confidential nature of the Confidential Information.
- 7 You must not, without our prior written consent, disclose:
- (a) the existence and terms of this deed; or
 - (b) any of the Confidential Information,
- to any person or a person who is approved by us and has signed and delivered to us a confidentiality deed in the same terms as this deed, unless disclosure is required by any law, order of a government agency or the rules of any stock exchange and provided that, prior to such disclosure, you provide us with sufficient notice to enable us to seek a protective order or other remedy.
- 8 You must not use, disclose or reproduce any of the Confidential Information for any purpose other than the Approved Purpose and in accordance with this deed.
- 9 You must establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure and use the same degree of care a prudent person would use to protect that person's confidential information.
- 10 You must immediately notify us of any potential, suspected or actual breach of the undertakings contained in this deed.
- 11 You acknowledge and agree that we have not made nor make any representation or warranty, express or implied, as to the accuracy, content, legality or completeness of the Confidential Information or that the Confidential Information does not infringe the intellectual property rights or other rights of any person.
- 12 You acknowledge and agree that this deed does not grant you any licence or other right in relation to the Confidential Information except as expressly provided in this deed.
- 13 If the Confidential Information contains any Personal Information, you must, with respect to that Personal Information:
- (a) comply with the Privacy Act 1988 (Cwlth), and any other Privacy Laws by which it is bound, with respect to that Personal Information;
 - (b) comply with any privacy code or policy which has been adopted by us (copies available on request) and notified to you as if you were bound by that code or policy;
 - (c) not disclose the Personal Information outside of Australia without written consent from us;
 - (d) promptly notify us of any complaint or investigation under, or relating to, any of the laws, codes or policies referred to in (a) and (b) above; and co-operate with us in the resolution of any such complaint or investigation.

- 14 You acknowledge and agree that damages may be an insufficient remedy for any actual or threatened breach of this deed by you, and, without prejudice to any other rights and remedies otherwise available to us, we may apply to a court for an order preventing you from breaching this deed.
- 15 You acknowledge and agree that the Confidential Information and any other information disclosed or otherwise made available by us or our Representatives was not prepared with the intention that you would rely on that information.
- 16 Subject to any law to the contrary, and to the maximum extent permitted by law, we disclaim all liability for any loss, cost, charge, expense or damage (whether foreseeable or not) arising directly or indirectly from, and which is suffered by any person using, disclosing or acting on any Confidential Information whether the loss, cost, expense or damage arises in connection with any negligence, default or lack of care by us or any of our Representatives, or from any misrepresentation or any other cause.
- 17 You agree to indemnify us against all loss, damage, expense and costs arising due to any breach of this deed by you.
- 18 You agree that any failure or delay by us in exercising any right, power or remedy under this deed does not operate as a waiver, and any single or partial exercise of a right, power or remedy does not prevent any further exercise of that right, power or remedy, or an exercise of any other right, power or remedy.
- 19 In respect of Confidential Information which is confidential to a third party to whom we owe an obligation of confidence, the obligations in paragraphs 6 to 10 (inclusive) continue until the date on which our obligation of confidence to the third party ceases.
- 20 In respect of all other Confidential Information (that is, Confidential Information to which paragraph 19 does not apply), the obligations in paragraphs 6 to 10 (inclusive) expire when all of the Confidential Information is in or becomes part of the public domain, otherwise than through a breach of this deed or an obligation of confidence owed to us or our Representatives.
- 21 You agree not to, without obtaining the prior written consent of us:
- (a) make any disclosure in relation to:
 - (i) any negotiations involving you or us or any other person; or
 - (ii) any possible transactions,in relation to or arising from the Approved Purpose;
 - (b) disclose the contents of any discussions between each of us and you in relation to the Approved Purpose,
- unless disclosure is required by any law, order of any government agency or the rules of any stock exchange.
- 22 You agree that the undertakings in this deed are given for the benefit of, and are enforceable by, each of us and any of our current or future Representatives even though the Representative is not a party to this deed.
- 23 This deed is governed by the law in force in New South Wales.

Please confirm your agreement by signing and returning to the undersigned the enclosed duplicate copy of this letter.

Yours sincerely,

Executed as a deed

EXECUTED by **CABCHARGE**)
AUSTRALIA LIMITED in accordance)
with section 127(1) of the Corporations)
Act 2001 (Cwlth) by authority of its)
directors:)

.....)
Signature of director)

.....)
Name of director (block letters)

.....
Signature of director/company
secretary*

*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)

*delete whichever is not applicable

Accepted and agreed:

SIGNED, SEALED AND DELIVERED)
by **#INDIVIDUAL'S NAME#** in the)
presence of:)

.....)
Signature of witness)

.....)
Name of witness (block letters)

.....
Signature of **#INDIVIDUAL'S NAME#**