



Touch Retailer Registration Form

(Touch Networks Pty Ltd - ABN 51 091 258 650)

Please answer ALL questions and write clearly in CAPITAL LETTERS.

FAX THIS FORM TO 03 8456 6254.

1. BUSINESS / TRADING NAME:			
2. BUSINESS / TRADING ADDRESS: (Including State & Postcode)		P.O. Box not accepted	
3. COMPANY / LEGAL ENTITY NAME:			
4. COMPANY / LEGAL ENTITY ADDRESS: (Including State & Postcode)			
5. TYPE OF BUSINESS:		(Newsagent, Convenience Store, etc.)	
6. CONTACT PERSON:			
7. CONTACT DETAILS: Please provide all contact details		Contact phone no	Contact fax no
		Contact email address	
8. HOW WOULD YOU LIKE TO RECEIVE YOUR BILLING ADVICE? (Please Tick One Only)	Tick here	E-MAIL	Your Billing Advices will be sent to the EMAIL address below. No fee applies. e-mail address:
	Tick here	FAX	Your Billing Advices will be sent to the FAX number below. A fee of \$0.33 applies per page (including GST). Fax number:
9. NUMBER OF TERMINALS REQUIRED:			
10. POS SYSTEM AND VERSION: (e.g. Tower Retailer 2.2)			
11. \$ GROSS PRODUCT SOLD LAST MONTH THROUGH CURRENT ELECTRONIC RECHARGE SYSTEM Please provide your best estimate			
12. COPY OF CERTIFICATE OF BUSINESS REGISTRATION: Compulsory for non Tower Systems users	Tick here	YES, I have attached a copy of my certificate of business registration.	Tick here
			NO, I have not attached a copy of my certificate of business registration because I am a Tower Systems user.

OFFICE USE ONLY	
Complete	
Loaded	
Sent	

Direct Debit Authorisation & Agreement

(Touch Networks Pty Ltd - ABN 51 091 258 650)



Direct Debit Request		
Request and Authority to debit the account named below to pay Touch Networks Pty Ltd Please fill in all details and fax back to 03 8456 6254		
Request and Authority to Debit	Company name	
	A.B.N.	
	request and authorise Touch Networks Pty Ltd (Debit User Identification Number 199295) to arrange, through its own financial institution, for any amount Touch Networks Pty Ltd may debit or charge you to be debited through the Bulk Electronic Clearing System from an account held at the financial institution identified below and paid to the Debit User, subject to the terms and conditions of the Direct Debit Request - Service Agreement.	
Name & address of financial institution at which account is held	Financial institution	
Details of the account to be debited	Name of account	
	BSB	
	Account number	
Payment terms	Touch Networks Pty Ltd will direct debit the account (listed above) on a weekly basis.	
Acknowledgement	By signing this Direct Debit Request you acknowledge having read and understood the terms and conditions governing the debit arrangements between you and Touch Networks Pty Ltd as set out in this Request and in your Direct Debit Request - Service Agreement.	
Insert your details	Signature	<small>Director / Proprietor / Owner ONLY</small>
	Name	
	Capacity for signing	<small>Director / Proprietor / Owner ONLY</small>
	Postal address	
	E-mail address or fax number	<small>For delivery of Billing Advice</small>
	Date	

Direct Debit Request – Service Agreement

Definitions	<p>account means the account held at your financial institution from which we are authorised to arrange for funds to be debited.</p> <p>agreement means this Direct Debit Request Service Agreement between you and us.</p> <p>banking day means a day other than a Saturday or a Sunday or a public holiday listed throughout Australia.</p> <p>debit day means the day that payment by you to us is due.</p> <p>debit payment means a particular transaction where a debit is made.</p> <p>direct debit request means the Direct Debit Request between us and you (and includes any Form PD-C approved for use in the transitional period).</p> <p>transitional period means the period commencing on the industry implementation date for Direct Debit Requests (31 March 2000) and concluding 12 calendar months from that date.</p> <p>us or we means Touch Networks Pty Ltd (the Debit User) you have authorised by signing a direct debit request.</p> <p>you means the customer who signed the direct debit request.</p> <p>your financial institution is the financial institution where you hold the account that you have authorised us to arrange to debit.</p>
1. Debiting your account	<p>1.1 By signing a direct debit request, you have authorised us to arrange for funds to be debited from your account. You should refer to the direct debit request and this agreement for the terms of the arrangement between us and you.</p> <p>1.2 We will only arrange for funds to be debited from your account if we have sent to the address or alternate address nominated by you in the direct debit request, a billing advice which specified the amount payable by you to us and when it is due.</p> <p>1.3 If the debit day falls on a day that is not a banking day, we may direct your financial institution to debit your account on the following banking day. If you are unsure about which day your account has or will be debited you should ask your financial institution.</p>
2. Changes by us	We may vary any details of this agreement or a direct debit request at any time by giving you at least fourteen-(14) days' written notice.
3. Changes by you	<p>3.1 Subject to 3.2 and 3.3, you may change the arrangements under a direct debit request by contacting on Touch Networks Pty Ltd 1800 286 824.</p> <p>3.2 If you wish to stop or defer a debit payment you must notify us in writing at least fourteen (14) days before the next debit day. This notice should be given to us in the first instance.</p> <p>3.3 You may also cancel your authority for us to debit your account at any time by giving us fourteen-(14) days notice in writing before the next debit day. This notice should be given to us in the first instance.</p>
4. Your obligations	<p>4.1 It is your responsibility to ensure that there are sufficient clear funds available in your account to allow a debit payment to be made in accordance with the direct debit request.</p> <p>4.2 If there are insufficient clear funds in your account to meet a debit payment:</p> <ul style="list-style-type: none">(a) you may be charged a fee and/or interest by your financial institution;(b) you may also incur fees or charges imposed or incurred by us; and(c) you must arrange for the debit payment to be made by another method or arrange for sufficient clear funds to be in your account by an agreed time so that we can process the debit payment. <p>4.3 You should check your account statement to verify that the amounts debited from your account are correct.</p> <p>4.4 If Touch Networks Pty Ltd are liable to pay goods and services tax ("GST") on a supply made in connection with this agreement, then you agree to pay Touch Networks Pty Ltd on demand an amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.</p>
5. Dispute	<p>5.1 If you believe that there has been an error in debiting your account, you should notify us directly on Touch Networks Pty Ltd 1800 286 824 and confirm that notice in writing with us as soon as possible so that we can resolve your query more quickly.</p> <p>5.2 If we conclude as a result of our investigations that your account has been incorrectly debited we will respond to your query by arranging for your financial institution to adjust your account (including interest and charges) accordingly. We will also notify you in writing of the amount by which your account has been adjusted.</p> <p>5.3 If we conclude as a result of our investigations that your account has not been incorrectly debited we will respond to your query by providing you with reasons and any evidence for this finding.</p> <p>5.4 Any queries you may have about an error made in debiting your account should be directed to us in the first instance so that we can attempt to resolve the matter between us and you. If we cannot resolve the matter you can still refer it to your financial institution which will obtain details from you of the disputed transaction and may lodge a claim on your behalf.</p>
6. Accounts	<p>6.1 You should check:</p> <ul style="list-style-type: none">(a) with your financial institution whether direct debiting is available from your account as direct debiting is not available on all accounts offered by financial institutions.(b) your account details which you have provided to us are correct by checking them against a recent account statement; and(c) with your financial institution before completing the direct debit request if you have any queries about how to complete the direct debit request.
7. Confidentiality	<p>7.1 We will keep any information (including your account details) in your direct debit request confidential. We will make reasonable efforts to keep any such information that we have about you secure and to ensure that any of our employees agents who have access to information about you do not make any unauthorised use, modification, reproduction or disclosure of that information.</p> <p>7.2 We will only disclose information that we have about you:</p> <ul style="list-style-type: none">(a) to the extent specifically required by law; or(b) for the purpose of this agreement (including disclosing information in connection with any query or claim).
8. Notice	<p>8.1 If you wish to notify us in writing about anything relating to this agreement, you should write to Touch Networks Pty Ltd, Level 8, 342 Flinders St Melbourne VIC 3000.</p> <p>8.2 We will notify you by sending a notice in the ordinary post to the address you have given us in the direct debit request.</p> <p>8.3 Any notice will be deemed to have been received on the third banking day after posting.</p>

touch services



TERMS AND CONDITIONS

This Retailer Agreement is between:

TOUCH NETWORKS PTY LTD (ABN 51 091 258 650),
Level 8, 342 Flinders Street, Melbourne, Victoria 3000,
and the

RETAILER (being the person who is identified on the
Direct Debit Agreement lodged with Touch Networks).

1. Commencement & Duration

1.1 This Agreement will commence on the date on
which the Retailer completes the Activation Process and
will continue until it is terminated under clause 12.

1.2 On and from the date that the Retailer completes
the Activation Process the Retailer agrees to accept
fully the terms set out in this Agreement and to be
bound by those terms. This will be the case despite the
fact that the Retailer may not have signed a copy of
this Agreement.

2. Access to Touch Services

2.1 Subject to clause 2.2, Touch Networks will provide
the Touch Services to the Retailer via the Approved
Terminal(s) at the Approved Outlet(s).

2.2 The Retailer agrees to be bound by this Agreement
and may only commence to access the Touch Services
following completion of the Activation Process.

3. Distribution of the Products

3.1 On behalf of the applicable Provider, Touch
Networks authorises the Retailer to sell the Products via
the Approved Terminal and in accordance with this
Agreement.

3.1A Where the Retailer provides Product(s) for sale via
the Approved Terminal(s) at the Approved Outlet(s):
(a) the applicable Provider Terms will apply in addition
to these terms and conditions; and
(b) to the extent of any inconsistency between these
terms and conditions and the applicable Provider Terms
in relation to the sale of Product(s), those Provider
Terms will apply.

3.2 The Retailer must only sell or accept orders for the
Products via Approved Terminals and at Approved
Outlet(s).

3.3 The Retailer must notify Touch Networks in writing
at least 30 days before any proposed change of
Approved Outlet and must not sell the Products at any
changed location without obtaining Touch Networks'
prior written approval.

3.4 The Retailer must not process a sale of the
Products unless the Products have been paid for in full
by a Customer, and the risk of any loss arising by way
of dishonoured payment or otherwise will be borne
by the Retailer.

3.5 The Retailer acknowledges that, subject to clause
3.6, and to the extent permitted by law, payments for
Products are not refundable.

3.6 Where the relevant Provider provides a refund,
Touch Networks will endeavour to process a request for
a refund by the Retailer, provided that the Retailer
complies with the Refund Request Procedure within 24
hours of the relevant transaction.

4. Retailer Obligations

4.1 The Retailer must actively offer for sale, display,
sell and promote the sale of the Products, and must
make the Products readily available to the public during
the Retailer's normal business hours.

4.2 The Retailer must not make any warranty,
representation or statement with respect to any
product or service of a Provider, its suitability for any
particular use, compatibility with any equipment, its
characteristics, performance or otherwise, that is
inconsistent with, differs from or is misleading or
deceptive as to, the express terms of any specification,
warranty or guarantee given by the Provider.

4.3 The Retailer must not make the sale of any Product
conditional upon the sale of any other goods or services
nor impose or seek to impose any terms or conditions
in relation to such sale other than those set out in the
terms and conditions issued by the applicable Provider.

4.4 The Retailer must ensure at all times that a
sufficient number of the Retailer's employees are
properly trained to sell the Products using the
equipment provided to the Retailer and must in such
training cover such aspects of Retailer performance and
obligations under this Agreement as Touch Networks
may reasonably require and direct.

4.5 The Retailer must comply with all applicable laws
and regulations in force from time to time.

4.7 The Retailer must notify Touch Networks
immediately upon becoming aware of any proposed
changes of ownership of the Retailer or the Retailer's
business.

5. Advertising, Marketing & Point of Sale

5.1 Touch Networks may use the Retailer's name and
details of the Approved Outlets in any promotional
material relating to the Products or the Touch Services.
This will include a directory listing of retailers.

5.2 If requested to do so by Touch Networks, the
Retailer will display point of sale material or use
merchandising material delivered by a Provider and/or
Touch Networks.

5.3 The Retailer must not produce, distribute, display or
change any point of sale material or use merchandising
material without Touch Network's prior written consent.

5.4 Title to all point of sale or merchandising material
remains with Touch Networks or the Provider (as the
case may be).

6. Payment & Fees

6.1 The Retailer must make Payment to Touch
Networks for all Products sold by it. Products are
deemed to be sold as soon as the electronic transaction
for that Product is complete, which is conclusively
determined by Touch Networks by reference to its
records, (whether contained in its Host System
or otherwise).

6.2 Touch Networks may directly debit the Retailer's
Direct Debit Account on every Payment Day (or such
other time as it considers appropriate), for all amounts
owing to it under this Agreement. In relation to
amounts owing for the sale of Products, Touch
Networks may directly debit the Retailer for all the
proceeds of the sale:

(a) less the Retailer Commission or Retailer Margin (as
the case may be) and any GST; or

(b) at Touch Network's discretion, in full, reimbursing
the Retailer Commission or Retailer Margin (as the case
may be) and any GST within 14 days.

6.3 The Retailer acknowledges that a Provider, under
the terms of its agreement with Touch Networks, may

at any time alter the Retailer Commission or Retailer Margin. If that occurs, Touch Networks must use its reasonable endeavours to give the Retailer notice of the change as soon as reasonably practicable after it is advised of the change by the Provider. Whether actual notice of the change is given by Touch Networks or otherwise, the Retailer acknowledges that the Retailer Commission or Retailer Margin applicable for the sale of a Product, from the date of the change notified by the Provider, will be the Retailer Commission or Retailer Margin (as changed).

6.4 The Retailer must ensure that there are sufficient clear funds in the Direct Debit Account by midday on the first Payment Day or midday on every other Payment Day to enable Touch Networks to make direct debits under clause 6.1.

6.5 The Retailer must not alter or close the Direct Debit Account during the term of this Agreement, without the prior written consent of Touch Networks.

6.6 If Touch Networks is unable to directly debit the Payment due to insufficient funds in the Retailer's Direct Debit Account or any other reason, Touch Networks may charge the Retailer (in addition to the Payment):

- (a) \$50 for the first instance and \$100 for each subsequent instance on which Touch Networks is unable to debit payment due to insufficient funds;
- or
- (b) interest on the overdue Payment at the rate of 4% over Westpac Banking Corporation's base rate from the due date of payment until the date of payment in full, whichever is the greatest.

6.7 Upon any insufficient funds default by the Retailer, Touch Networks may, without limitation:

- (a) suspend or cancel all access to the Touch Services until all outstanding payments by the Retailer are made to Touch Networks;
- (b) commence proceedings for recovery of outstanding amounts due by the Retailer to Touch Networks; or
- (c) immediately terminate this Agreement.

7. Communications Costs

7.1 The communications costs incurred from the dial-up made from the Approved Terminal to the Host System when a Retailer is processing a sale of a Product will be borne by Touch Networks.

7.2 All communication costs not referred to in clause 7.1, including costs associated with the Retailer dialling in to the Host System in order to retrieve reports or reprint vouchers, will be charged to the Retailer in accordance with the charges specified in the Price List or as otherwise notified to the Retailer from time to time.

8. Operator Error or Malfunction of Approved Terminal

The Retailer must pay for Products which are sold due to operator error or malfunction of the Approved Terminal, unless the Retailer complies with the Refund Request Procedure and Touch Networks is satisfied that the error was beyond the Retailer's control.

9. GST

9.1 Words or expressions used in this clause 9 which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (C'th) ("the GST Act") (as amended or re-enacted from time to time) have the same meaning in this clause.

9.2 The parties agree the following in respect of GST:

(a) If any supply under this Agreement is a taxable supply under the GST Act (or any similar Act which may be introduced in future), the party making the supply may recover from the recipient an additional amount on account of GST (or other similar tax), calculated in accordance with the GST Act. This paragraph does not apply if the amount payable for the taxable supply is specifically described as already including an amount of GST.

(b) If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by a reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

(c) If any amount under this Agreement is calculated as a specific percentage of a fee, revenue stream or otherwise arises from a revenue sharing agreement, that amount shall be calculated by reference to the relevant revenue net of GST, unless otherwise specified.

(d) The recipient of a supply under this Agreement is not obliged to pay any amount in respect of GST to the party making the supply unless and until the party making the supply under this Agreement issues a tax invoice (or, if an adjustment has occurred, an adjustment note) to the recipient in respect of that supply.

(e) Any amount payable pursuant to clause 9.2(a) is payable by the recipient of the supply at the same time as consideration for the supply is payable or within 14 days of the recipient receiving a tax invoice, or if an adjustment has occurred, an adjustment note (whichever event is later).

(f) The Retailer accepts any amendments that Touch Networks, acting reasonably, proposes to make to the Agreement in response to any relevant changes to the GST Act, any relevant change to the way the Commissioner of Taxation interprets or administers the GST Act, or any other occurrence that means that the terms of this Agreement do not make appropriate provision for the GST implications for, and the GST treatment of, the products or any other things supplied under this Agreement.

9.3 The recipient created tax invoice ("RCTI") agreement set out in this clause 9.3 applies to any taxable supply by the Retailer to Touch Networks under this Agreement for which commission is payable. The Retailer and Touch Networks agree, in relation to those taxable supplies, that:

- (a) Touch Networks will issue tax invoices for the Retailer;
- (b) the Retailer will not issue tax invoices for those taxable supplies, and any requirement on the Retailer to do so under any other clause of this Agreement is waived for so long as this clause 9.3 continues in effect;
- (c) the Retailer acknowledges that it is currently registered for GST and that it will immediately notify Touch Networks if it ceases to be registered;
- (d) Touch Networks acknowledges that it is currently registered for GST and that it will immediately notify the Retailer if it ceases to be registered; and
- (e) Touch Networks must not issue a document that would otherwise be an RCTI, on or after the date when Touch Networks or the Retailer has failed to comply with any of the requirements of the Determination

made by the Commissioner of Taxation under section 29-70(3) of the GST Act that covers any RCTIs issued by Touch Networks under this Agreement.

10. Intellectual Property & Logos

10.1 The Retailer must not:

- (a) claim any right in or to the Logos or Provider Logos in any manner;
- (b) claim any right in or to Touch Networks' Intellectual Property Rights which shall remain with Touch Networks, or make any use of Touch Networks' Intellectual Property Rights except as approved Touch Networks;
- (c) attempt to register or reserve for registration any trade marks similar to trade marks registered, reserved for registration or owned by Touch Networks or a Provider, including trade marks of Providers contained in any promotional material provided to Retailers in accordance with this Agreement or which the Retailer is otherwise permitted to use ("Trade Marks");
- (d) dispute Touch Networks' or a Provider's ownership of its Trade Marks;
- (e) reduce the value of the goodwill attached to any Trade Marks;
- (f) incorporate part of the Trade Marks into a Retailer's trade mark;
- (g) use or display a Provider's Trade Mark with goods or services which are not associated with that Provider;
- (h) use Trade Marks in any way not specified in this Agreement or in written notices from Touch Networks' or a Provider; or
- (i) assist or permit another person to do any of (a)-(h).

11. Warranties & Liability

11.1 Except as required by any law, all conditions, warranties, terms, undertakings, duties and obligations expressed or implied by law, custom, trade usage or otherwise in any way relating to the Products, the Touch Services or the performance of Touch Networks' obligations under this Agreement, are wholly excluded.

11.2 The liability of Touch Networks for breach of a term implied by law into this Agreement, is limited, at the option of Touch Networks, to the repair or replacement of the goods, the cost of repairing or replacing the goods, the resupply of the services or the payment of the cost of resupplying the services, as the case may be.

11.3 Except where to do so would contravene any law or make any part of this Agreement void or unenforceable, Touch Networks excludes any and all liability to the Retailer for any:

- (a) loss or damage suffered by the Retailer or any other person arising from inability to access the Touch Services for reasons including technical failures or malfunction of any telephone network or lines, computer online systems, servers or providers, computer equipment, or software or any other reason beyond Touch Networks' control; and/or
- (b) special, indirect or consequential loss or damage (including loss of profits, commission or revenue) suffered or incurred by the Retailer in connection with this Agreement regardless of the cause of action under which the liability arises.

11.4 Touch Networks limits its liability to the Retailer in respect of any and all claims made against it arising out of, or in connection with, this Agreement, regardless of the basis on which the Retailer is entitled to claim damages (including breach, negligence, misrepresentation, or other contract or tort claim, or

under an indemnity statute or otherwise) in aggregate to \$3000.

11.5 The Retailer warrants to Touch Networks that: (a) it has the power to enter into, exercise its rights, perform and comply with its obligations under this Agreement;

(b) its entry and exercise of rights under this Agreement does not and will not violate: a) any law to which it is subject; or b) being a company, its memorandum or articles of association or as the case may be, certificate of incorporation or by-laws or c) any agreement to which it is a party.

11.6 The Retailer warrants and undertakes to Touch Networks that the representations contained in this Agreement shall remain true for the duration of this Agreement and undertakes to notify Touch Networks immediately of:

(a) any changes in the nature of the Retailer's business, or

(b) any matter or event which constitutes or might give rise to a breach of any of the representations, warranties and undertakings in this Agreement and shall promptly provide Touch Networks with all details of such matters as Touch Networks may reasonably require.

11.7 The Retailer warrants and undertakes to Touch Networks that it will comply with any instructions issued to the Retailer by a Provider from time to time in accordance with applicable Provider Terms.

12. Suspension & Termination

12.1 Touch Networks may discontinue or suspend access to the Touch Services and the Retailer's right to sell the Product, immediately upon:

- (a) the Retailer breaching, or Touch Networks suspecting the Retailer is in breach of, any of the terms in this Agreement;
- (b) the Direct Debit Agreement ceasing (for any reason) to be in force;
- (c) change of ownership and/or operating address of the Retailer; or
- (d) the appointment of an administrator or a receiver, or order of bankruptcy in relation to the Retailer.

12.2 Either party may terminate this Agreement by providing 30 days written notice to the other party.

13. Sales Limits

13.1 Touch Networks may, on behalf of a Provider, impose daily sales limits or specified operating hours for the sale of certain Products.

14. Availability & Cost of Service

14.1 Touch Networks will endeavour to provide maximum notice to the Retailer of any changes in relation to the Products however under the terms of its agreement with its Providers it may at times be necessary to make changes within timeframes specified by the Providers.

14.2 The Retailer acknowledges and agrees that Touch Networks or a Provider may change or vary the Products or the cost, discount or commission applicable to individual Products supplied by Touch Networks to the Retailer from time to time.

14.3 Touch Networks may offer new Products through the Touch Services at any time.

14.4 Touch Networks may remove the availability of any Products from any Touch System at any time.

14.5 Touch Networks will make reasonable attempts to ensure all price variations and changes of available Products are communicated to the Retailer as soon

as possible, in writing, and/or by fax.

14.6 The Retailer shall not process or request any Product for which the Retailer disagrees with the charges associated with that Product.

14.7 Use of any new or changed Product after any such addition of, or change to, any Product is deemed to be acceptance by the Retailer of the new charges for that Product.

15. General

15.1 This Agreement in no way constitutes any relationship of employment or partnership between the Retailer and Touch Networks.

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

15.3 If the whole of any part of a provision of this Agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction.

The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.

16. Amendments

16.1 Subject to clause 14, the terms of this Agreement may be amended by Touch Networks from time to time by giving the Retailer not less than 30 days prior written notice of the amendments.

17. Audit

17.1 Touch Networks and/or representatives of any Providers shall be entitled upon giving reasonable notice to the Retailer to have access to each Approved Outlet, the staff at each Approved Outlet and the Retailer's records relating to the Products for audit purposes, the review of security arrangements and to investigate the operation of the Products at the Approved Outlet. The Retailer shall also allow Touch Networks such other access as is reasonable in order to enable Touch Networks to fulfil its obligations under this Agreement.

17.2 Touch Networks and/or the relevant Provider shall be entitled to inspect and copy all records kept by the Retailer relating to the Products.

18. Non-transferability of this Agreement

18.1 The rights and obligations granted in this Agreement must not be assigned, transferred, sub-contracted, charged or otherwise disposed of in any manner by the Retailer, without the prior written consent of Touch Networks.

19. Confidentiality

19.1 The Retailer shall keep all data or information obtained by it which is not publicly available relating to Touch Networks, the Touch Services, any Providers, the Products and the terms of this Agreement strictly confidential and shall not use such data or information for any purpose other than performing its obligations under this Agreement. The Retailer shall not use any data or information relating to the Customers of a Provider for any purpose whatsoever and shall not permit disclosure of such data or information to any third party. The Retailer shall ensure that all of its staff will comply with these obligations of confidentiality.

19.2 Touch Networks may use or disclose all sales information and data relating to the sale of Products.

20. Notices

20.1 Any notices or other communications under this Agreement shall be in writing addressed to:

(a) the Retailer at either the postal address or the email address notified to Touch Networks;

(b) Touch Networks at the address specified on page 1 of this Agreement or such other address as notified by Touch Networks to the Retailer in writing from time to time.

20.2 Any notices or other communications delivered or sent in accordance with this clause shall be deemed to have been duly given:

(a) if delivered personally or by courier, on delivery; or
(b) if sent by recorded delivery post, on the third Business Day of posting it;

(c) if sent by facsimile transmission, on the first Business Day after completion of its transmission; or

(d) if communicated by e-mail, on the first Business Day after the message is received by a computer under the control of the person to whom the notice or communication is being sent.

21. Retailer's Employees

21.1 The Retailer is liable for all acts and omissions of the Retailer's employees, contractors, and agents as if the same were acts and omissions of the Retailer.

22. Force Majeure

22.1 Neither party shall be deemed to be in breach of this Agreement or otherwise liable to the other party for any failure to perform, or for delay in the performance of its obligations under this Agreement due to causes beyond its control, including without limitation, failure of or interruptions of power or telecommunications services, failure or delay of bank payment systems, or postal services, failure of Touch Networks' suppliers or service providers or sub-contractors, acts of nature, governmental actions, fire, flood, natural disaster or labour disputes.

23. Governing Law & Jurisdiction

23.1 This Agreement is governed by the laws applicable in the State of Victoria and each party irrevocably and unconditionally submits to the jurisdiction of the courts in this state.

24. Providers

(a) Touch Networks enters into this Agreement in its own right and, where applicable, as an authorized agent or distributor of a Provider of one or more Products.

(b) Touch Networks may appoint an agent to perform some of its obligations under this Agreement (such as collection of payments from the Retailer).

(c) If Touch Networks appoints an agent to perform any of its obligations under this Agreement then performance by such agent will be deemed performance by Touch Networks.

(d) Touch Networks holds the benefit of any right under this Agreement in respect of a Provider for the benefit of the Provider, and may enforce such right on the Provider's behalf.

(e) Touch Networks may receive payments (whatsoever for its own benefit including fees, commissions and expenses including based on sales made by the Retailer) from Providers arising from this Agreement and such payments are authorised accordingly and may be retained for the benefit of Touch Networks.

(f) In addition Touch Networks may assign to other parties certain rights and obligations under this Agreement.

25. Definitions & Interpretation:

25.1 In this Agreement the following words have the following meanings, unless the context clearly indicates otherwise:

Agreement means this agreement and includes the Schedule and Ancillary Documents as amended from time to time;

Activation Process means processing of the first transaction by the Retailer using the Touch Services.

Ancillary Documents means all documents relating to the Touch Services issued by Touch Networks to the Retailer from time to time including the Direct Debit Agreement and the Price List;

Approved Outlet means the location(s) at which the Retailer is authorised to sell the Products as agreed between the parties and recorded on Touch Networks' register of data relating to the Retailer;

Approved Terminal means a terminal approved by Touch Networks which is programmed with the software which enables access to the Touch Services.

Business Day means any day other than a Saturday, Sunday or public holiday in Victoria;

Customer means any person who purchases or has purchased or requests or has requested to purchase a Product or makes an enquiry regarding the purchase of a Product;

Direct Debit Account means the Retailer's bank account set up in accordance with and detailed in the Direct Debit Agreement;

Direct Debit Agreement means the agreement provided to the Retailer together with this Agreement, allowing Touch Networks to debit the Payment from the Retailer's Direct Debit Account and includes the form that accompanies the Direct Debit Agreement;

Host System means the computer hardware system and associated software owned and/or operated by Touch Networks and situated at Touch Networks' head office or at any other location nominated by Touch Networks which is used by Touch Networks for processing the sale of Products through Approved Terminals;

Intellectual Property Rights means any intellectual property rights belonging to Touch Networks of whatever nature, including without limitation, patents, trade marks, service marks, registered designs, applications for any of the foregoing and the right to apply for any of the foregoing in any part of the world, design rights, copyright, inventions, confidential information, knowhow and business names and any similar rights situated in any country;

Logos means any logos or marks or other intellectual property of Touch Networks used in connection with the sale of Products;

Payment means the proceeds of all sales of Products including GST less the Retailer Commission or Retailer Margin (as applicable);

Payment Day means every Monday, or such other day or days during the week advised by Touch Networks from time to time on 30 days notice, during the term. The "first Payment Day" refers to the first Monday after the day on which the Retailer completes the Activation Process. If there is a public or bank holiday on a Monday, the Payment Day for that week will be on the next Business Day;

Price List means the document provided to the Retailer which specifies the Products the Retailer is authorised to sell and the Retailer Commission or

Retailer Margin (as applicable);

Product means a product or service specified in the Price List, as varied by Touch Networks and notified in writing to the Retailer from time to time;

Provider means a provider of Product;

Provider Logos means any logos or marks or other intellectual property owned by a Provider that is used in connection with the sale of Products;

Provider Terms means the terms and conditions of each Provider contained in the Schedule to this Agreement;

Refund Request Procedure means the procedure relating to a request for a Product refund by the Retailer as notified to the Retailer and amended by Touch Networks from time to time;

Retailer Commission means the commission received by the Retailer on the sale of certain Products as specified in the Price List, expressed either as a percentage or flat rate per transaction;

Retailer Margin means the margin received by the Retailer on the sale of certain Products, where the Retailer purchases the Product from the Provider via Touch Networks, and then resells the Product to the Customer;

Term means the term of this Agreement; and

Touch Services means a service by which Touch Networks enables the Retailer to sell Products to the public through an electronic service delivery means.

25.2 Reference to:

(a) the singular includes the plural and the plural includes the singular;

(b) a person includes a body corporate;

(c) a party includes the party's executors, administrators, successors and permitted assigns; and

(d) money is to Australian dollars, unless otherwise stated.

(e) "Including" and similar expressions are not words of limitation.

(f) Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.

(g) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

25.3 If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

25.4 Parties:

(a) If a party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly.

(b) an obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.

(c) a party which is a trustee is bound both personally and in its capacity as a trustee.

SCHEDULE – TELSTRA RETAILER TERMS

Retailer acknowledges Touch Networks is an authorised distributor of Telstra (and acts as Telstra's agent for the sole purpose of supplying authorisation numbers to Retailers). Retailer agrees that Touch Networks holds the benefit of any promises made by Retailer in respect of matters involving Telstra under this Schedule on trust for Telstra.

S1 Point of Sale Material

S1.1 Telstra may prepare point of sale material such as leaflets and posters ("**Point of Sale Material**").

S1.2 Touch Networks will deliver all Point of Sale Material to the Retailer's nominated address.

S1.3 Retailer must not produce, distribute, display or change any Point of Sale Material relating in any way to the Recharge Products, or which refers to Telstra, without obtaining Telstra's prior written consent.

S1.4 Retailers must publicly display at each place where Recharge Products are available for retail sale any Point of Sale Material (including, without limitation, any conditions of use) provided to the Retailer by Touch Networks within 7 days or such other timeframe as agreed from time to time.

S2 Promotion and Advertising

Retailer must not (and must not engage or assist any third party to):

(a) without Telstra's consent engage in any marketing or advertising campaign targeted at the customers of Telstra, whether by direct marketing, telemarketing or otherwise; or

(b) contact by means of telemarketing any person that Retailer knows, or should reasonably have known, is a customer of Telstra, for the purpose or with the effect of encouraging customers of Telstra to connect to a telecommunications service which is not provided by Telstra. Telstra may from time to time provide Touch Networks with merchandising material to promote the Recharge Products to distribute to Retailer. The merchandising material always remains the property of Telstra. Retailer must not change or Point of Sale Material or merchandising material without Telstra's (Telstra Brand Team) written consent.

S3 Branding Instructions

Retailer must follow Touch Networks' (or Telstra's) reasonable branding instructions regarding the Recharge Products within the time frames specified by Touch Networks (or Telstra).

S4 Intellectual Property and Trade Marks

S4.1 Retailer must not use the IPR of Telstra unless allowed to under this Schedule.

S4.2 Retailer acknowledges that the IPR of Telstra is the exclusive property of Telstra and that Retailer has no interest in it or the goodwill arising from its use.

S4.3 Retailer may only use the Trade Marks in a way that Telstra has approved in writing.

S4.4 Retailer must not:

- (a) attempt to register or reserve for registration any trade marks similar to trade marks registered, reserved for registration, or owned by Telstra; or
- (b) dispute Telstra's ownership of the Telstra Trade Marks or other IPR; or
- (c) reduce the value of the goodwill attached to the Telstra Trade Marks or other IPR; or
- (d) incorporate part of the Telstra Trade Marks into any of Retailer trade marks; or
- (e) use or display the Telstra Trade Marks with goods or services which are not associated with Telstra;

or (f) use the Telstra Trade Marks in any way not specified in this Schedule or in other written notices from Telstra; or (g) assist or permit anyone else to do any of the things set out in paragraphs S4.4(a)-(f).

S5 Confidential Information

S5.1 Retailer must treat as Confidential Information the terms of this Agreement and all information relating to Telstra's business or customers which is disclosed by Telstra or acquired by Retailer in connection with this Agreement. This does not apply to information in the public domain.

S5.2 Retailer must not use Telstra's Confidential Information without Telstra's written consent except:

- (a) to perform or enforce this Agreement; or
- (b) to obtain legal advice in relation to matters arising out of this Agreement; or
- (c) as authorised or required by law.

S5.3 Retailer must not disclose Telstra's Confidential Information except to Retailer's representatives for any of the purposes in clause S5.2.

S5.4 Retailer must return any Confidential Information Telstra gives Retailer if asked.

S5.5 Retailer must ensure that Retailer's representatives comply with these obligations on Confidential Information.

S5.6 These obligations continue after this Agreement terminates or ends.

S5.7 Retailer consents to Telstra sharing Retailers' information including sales data with Telstra's distributors.

S6 Representations and Warranties

Retailer must not:

(a) make any warranty, representation or statement with respect to any product or service of Telstra, its suitability for any particular use, compatibility with any equipment, its characteristics, performance or otherwise, that is inconsistent with, differs from or is misleading or deceptive as to, the express terms of any warranty or guarantee given by Telstra or any written specifications provided by Telstra for the purpose of being passed on to customers; or

(b) admit or accept any liability under any circumstances in relation to an EPIN or Recharge Product in dealing with a customer on behalf of Telstra

S7 Appointment as agent

S7.1 Touch Networks appoints Retailer as its agent to promote and sell EPINs on behalf of Telstra. The Retailer acknowledges that all EPINs supplied by Touch Networks or its authorised agents remain the property of Telstra until sold to a customer and may be cancelled at any time on notice from Touch Networks or Telstra.

S7.2 Retailer acknowledges that its appointment as an agent by Touch

Networks for EPINs will terminate immediately upon the termination or expiration of Touch Networks' supply agreement with Telstra.

S8 Remuneration

Retailer agrees and acknowledges that Telstra, or Touch Networks on Telstra's behalf, may by prior notice change the type, level or amount of remuneration it pays to the Retailer for promoting and selling the EPINs.

S9 Schedule Definitions

EPIN means an electronic code provided by Telstra and sold to a customer to allow the customer to credit their Recharge Product account.

Confidential Information of a party means all information regardless of how the information is stored or delivered, exchanged between the parties relating to the business, technology or other affairs of that party and includes the terms of this Schedule.

IPR means all intellectual property rights at any time protected by statute or common law, including:
(a) patents, copyright, rights in circuit layouts, registered designs, trade marks and any right to have confidential information kept confidential; and
(b) any applications or right to apply for registration of any of the rights referred to in paragraph (a) above.

Recharge Product means the Telstra recharge products as advised by Telstra from time to time.

Schedule means this schedule to the Agreement.

Telstra means the Telstra Corporation Limited (ABN 33 051 775 556) of Level 13, 525 Collins Street, Melbourne, Victoria 3000.

Telstra Trade Marks means the Telstra logo, the Telstra PhoneAway logo, the Telstra Phonocard logo, the Say G'day logo and the Telstra Pre-Paid Plus logo and any other logos or marks that are associated with a Recharge Product.