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| 11. Definitions and interpretation 11.1 Definitions In this Agreement: (1) Activation Kit means the activation pack comprising instructions, decals, a Training Manual and an activation card that the Merchant needs to use to activate its EFTPOS terminals to accept Gift Cards; (2) Agreement means these Merchant Terms and Conditions including any cover sheet and schedule or annexure; (3) Alliance Agreement means the agreement between IGA Distribution and the Merchant setting out the terms of the strategic alliance between IGA Distribution and the Merchant (including use of the IGA brand and image by the Merchant) and known as the IGA Alliance Agreement; (4) Business Day means any day other than a Saturday, Sunday or public holiday in New South Wales; (5) Commencement Date means the date of this Agreement; (6) Confidential Information means the terms and conditions of this agreement and the Gift Card Program. The Customer Data constitutes confidential information of Metcash; (7) Customer Data means all information generated or collected concerning customers of the Gift Card Program and their use of Gift Cards; (8) EFTPOS means electronic funds transfer point of sale; (9) Fees means the fees and charges payable by the Merchant to Metcash set out in Schedule A, as may be varied from time to time pursuant to clause 6.4; (10) Gift Card means a branded magnetic strip EFTPOS gift card that is issued by Metcash under the Gift Card Program; (11) Gift Card Program means the Metcash Group branded Gift Card program operated by Metcash; (12) GST means GST as defined in <i>A New Tax System (Goods and Services Tax) Act 1999</i> as amended (GST Act) or any replacement or other relevant legislation and regulations | (13) Intellectual Property Rights includes any: (a) copyright; (b) design, patent, trade mark, service mark, logo, semiconductor or circuit layout rights (whether registered, unregistered or applied for); (c) trade, business, company or domain name; (d) moral right; (e) know how, inventions, processes, trade secret; confidential information (whether in writing or recorded in any form); and (f) any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields; (14) Materials means any information, data, software, code, material or content developed or supplied by Metcash (15) Metcash means Metcash Trading Limited; (16) Metcash Group means Metcash and its related and affiliated companies; (17) Procedures means the procedures for Gift Card issuance, redemption and refunds and other procedures as notified by Metcash from time to time; (18) Promotion Kit means the promotional pack comprising promotional materials including posters, badges, point of sale imagery provided by Metcash to the Merchant for promoting the Gift Card Program; (19) Schedule means any schedule to this Agreement; (20) Term means the term of this Agreement as determined under clause 8.1; and (21) Training Manual means a training manual for the acceptance and processing of Christmas Card Club transactions. |
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Schedule A-Fees

| Fee | Amount | Payable |
|--------------------|--|---|
| Administrative fee | 70¢ (seventy cents) for each transaction using a Gift Card as payment for the Merchant's goods or services | In accordance with Metcash's standard trading terms |

Executed as an Agreement

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| Signed for and on behalf of Metcash Trading Limited by its duly authorised representative: | Signed for and on behalf of the Merchant by its duly authorised representative: |
| Signature | Signature |
| Name | Name |
| Position | Position |
| Date | Date |



Please return by MAIL to:
IGA Gift Cards
Metcash Trading Limited
1 Thomas Holt Drive
Macquarie Park NSW 2113



Gift Card Program Merchant Agreement

Date of Agreement _____

Merchant (Company Name) _____

Premises (Store Name/s) _____

ABN _____



Gift Card Program

Merchant Agreement

Metcash is the issuer of Gift Cards under its Gift Card Program. This Agreement sets out the terms and conditions under which the Merchant agrees to participate in the Gift Card Program.

1. Merchant's participation in the Gift Card Program

1.1 From the Commencement Date, the Merchant will participate in the Gift Card Program on the terms set out in this agreement.

2. Merchant's obligations

2.1 The Merchant must:

- (1) promote the Gift Card Program to its customers at its store(s) in accordance with and utilising the Promotion Kit provided by Metcash;
- (2) not use the Promotion Kit for any other purpose;
- (3) use reasonable efforts to sell Gift Cards to customers on Metcash's behalf;
- (4) load each purchased Gift Card with the amount of the purchase price paid by the customer (as determined by the customer, subject to minimum and maximum amounts specified in the Procedures) and activate the Gift Card, in accordance with the Procedures. The Merchant must not charge a customer any fee or charge in addition to the loaded purchase price for a Gift Card. The Merchant agrees that the purchase price is paid to and is held by the Merchant on behalf of Metcash, and shall be paid and transferred to Metcash through the Merchant's EFTPOS facilities or as may be otherwise directed by Metcash;
- (5) comply with all of the Procedures; and
- (6) accept Gift Cards from its customers as a method of payment for all goods and services in its store, subject to any restrictions as to the goods or services which may be purchased using particular types of Gift Cards as specified in the Procedures.

2.2 The Merchant is responsible at its own cost for obtaining and maintaining EFTPOS facilities necessary to process transactions using the Gift Card.

2.3 Subject to clause 2.1(6), the Merchant must honour and accept all unexpired Gift Cards during normal business hours on each business day as a method of payment for its goods and services at its store.

2.4 The Merchant must not impose any surcharge or additional payment on, or refuse any discount to, a customer for or in connection with the use of a Gift Card to purchase goods or services.

3. Metcash's obligations

3.1 Metcash will:

- (1) provide the Merchant with an Activation Kit following the Commencement Date;
- (2) procure that payments will be made to the Merchant for the amounts of valid transactions processed using a valid Gift Card and EFTPOS facility in accordance with this Agreement;
- (3) provide the Merchant with a Promotion Kit following the Commencement Date and in each subsequent year of the Term; and
- (4) provide a call centre to handle customer and Merchant queries.

4. Supply and handling of Gift Cards

4.1 The Merchant may issue to Metcash from time to time purchase orders (**Orders**) for the supply of Gift Cards, specifying:

- (1) the quantities of Gift Cards required;
- (2) the store(s) to which the Gift Cards are to be delivered; and
- (3) the desired date of delivery of the Gift Cards, not being less than 30 days from the date of Order.

4.2 Each Order is subject to acceptance by Metcash in its discretion. Metcash will use reasonable endeavours to notify the Merchant of acceptance of an Order within two (2) Business Days of receipt of the Order.

4.3 Metcash will use reasonable endeavours to send by post to the Merchant's specified delivery address, Gift Cards in accordance with each Order accepted by Metcash. Metcash will not be liable for any delayed or failed delivery of an Order.

4.4 The Merchant must notify Metcash of any failure or delay in receiving an Order accepted by Metcash.

4.5 The Merchant must not load or activate Gift Cards other than upon purchase of a Gift Card by a customer, in accordance with the Procedures. The Merchant must take all reasonable measures to:

- (1) store and display unsold Gift Cards securely; and
- (2) prevent loss, theft, unauthorised access or use of unsold Gift Cards.

4.6 The Merchant must immediately notify Metcash of any lost or stolen Gift Cards, and any unauthorised or fraudulent access or use of Gift Cards of which it becomes aware.

5. Confidentiality and privacy

5.1 Each party must keep and take all steps necessary to keep the other party's Confidential Information confidential and must not disclose such Confidential Information to any third party, except as required by law or regulatory body.

5.2 The Merchant must comply with the *Privacy Act 1988 (Cth)*, any other applicable Australian statute, regulation, code of conduct or law concerning privacy, and the privacy policies of Metcash as advised by Metcash to the Merchant from time to time.

6. Intellectual Property Rights

6.1 All right title and interest (including all Intellectual Property Rights) in and to the Gift Card Program, the Customer Data and the Materials are retained by and vest in Metcash.

6.2 Other than the rights expressly granted to the Merchant under this Agreement, the Merchant has no right, title or interest in or to the Gift Card Program, Customer Data, or the Materials under or in connection with this Agreement.

7. Fees

7.1 The Merchant must pay the Fees to Metcash. The Fees are in addition to any third party fees or charges the Merchant may be liable to pay in connection with the use of EFTPOS facilities to process Gift Card transactions.

7.2 Metcash will invoice the Merchant on a monthly basis for Fees. All Fees must be paid in accordance with Metcash's standard trading terms. Fees

will not be refunded in the event of the return by any customer of any goods or services purchased using a Gift Card.

7.3 Metcash may terminate or suspend the participation of the Merchant in the Gift Card Program if the Merchant fails to pay Fees.

7.4 Metcash may vary the Fees from time to time upon 60 days' prior written notice to the Merchant.

7.5 Unless GST is expressly included, the consideration expressed to be payable for any supply made under or in connection with this Agreement does not include GST.

8. Liability

8.1 Metcash excludes from this Agreement all statutory or implied conditions, warranties and indemnities to the extent permitted by law.

8.2 To the extent permitted by law, Metcash's total liability to the Merchant arising in relation to any express, statutory or implied condition, warranty or indemnity which cannot legally be excluded, and in connection with any breach of this Agreement, is limited at the option of Metcash to:

- (1) in the case of goods the replacement or repair of the goods, or the payment of the cost of doing so; or
- (2) in the case of services, resupplying the services or equivalent services or the payment of the cost of doing so.

8.3 Metcash will not be liable for any indirect, incidental, special or consequential loss or damages (including but not limited to loss of profit, opportunity, expectation, goodwill, data, revenue and pure economic loss).

9. Term and termination

9.1 This Agreement will be valid from the Commencement Date and, unless terminated earlier in accordance with clauses 9.2 or 9.3, continues for 3 years (**Initial Term**). This Agreement automatically renews for one year periods (**Renewal Term**) on the expiry of the Initial Term and each Renewal Term, unless the Merchant gives Metcash written notice not less than 30 days' prior to such renewal, that it does not wish to renew the Agreement.

9.2 A party may terminate this Agreement if:

- (1) the other party materially breaches this Agreement and such breach is not capable of remedy;
- (2) the other party breaches this Agreement and fails to remedy such breach within 15 days of written notice requiring the breach to be remedied; or
- (3) the other party ceases to trade; suspends payment of its debts generally; enters into or proposes to enter into a voluntary arrangement or composition with its creditors, becomes insolvent, bankrupt or goes into liquidation (other than for the purpose of solvent reconstruction or amalgamation) or has a receiver, administrator, trustee in bankruptcy, liquidator or similar officer appointed in respect of all or part of its business and assets, or anything occurs analogous to the foregoing under the laws of the place where that party is established, or otherwise ceases to be a validly existing corporation.

9.3 Metcash may terminate this Agreement:

- (1) at any time on 30 days' prior written notice to the Merchant; and
- (2) immediately on written notice in the event that any Alliance Agreement terminates or expires, or the Merchant ceases to conduct its business under the IGA name or brand.

9.4 In the event of termination or expiry of this Agreement for any reason:

- (1) all rights and licences granted under this Agreement immediately cease;
- (2) the Merchant must immediately:
 - (a) cease accepting Gift Cards for customer transactions;
 - (b) cease promoting the Gift Card Program or selling Gift Cards; and
 - (c) return to Metcash all unsold Gift Cards.
- (3) the Merchant must not represent or hold itself out to any customer as being a participant in the Gift Card Program.

10. General

Notices

10.1 Notices will be deemed to have been given to a Merchant on the second business day following mailing by ordinary mail to the Merchant's address.

Counterparts

10.2 This Agreement may be executed in any number of counterparts or duplicates, each of which will be an original, and such counterparts or duplicates will together constitute one and the same agreement.

Governing Law

10.3 This Agreement will be governed by the laws of New South Wales, Australia. The parties submit to the exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia.

