



2.3 The Retailer must use the Online Services in accordance with this Agreement. The Retailer must not bypass any security mechanisms imposed by the Online Services or use the Online Services in any manner or for any purpose that is unlawful or in any manner that violates any rights of Metcash.

2.4 The consideration for the Retailer entering into this Agreement is the provision of the use of the Online Services by Metcash and the Retailer acknowledges that such consideration is valuable consideration.

### 3. Confidentiality and Privacy

3.1 The Retailer must keep the Confidential Information confidential and must not, without the prior written approval of Metcash, disclose the Confidential Information unless such disclosure is required by law. The Retailer must ensure that its employees, agents and representatives do not make public or disclose the Confidential Information. The Retailer must on demand destroy or return to Metcash any Confidential Information supplied by Metcash in connection with this Agreement or the Online Services.

3.2 By using the Online Services, the Retailer agrees to the Privacy Policies of Metcash and its Related Entities, the terms of which are relevantly set out at [http://www.metcash.com/index.cfm?page\\_id=2141](http://www.metcash.com/index.cfm?page_id=2141) and [http://www.iga.net.au/igafresh/index.cfm?page\\_id=2335](http://www.iga.net.au/igafresh/index.cfm?page_id=2335). In this clause words and phrases have the same meanings that those terms have in the *Privacy Act 1988* (Cth). The Retailer must comply with Division 3 of Part III of the *Privacy Act 1988* (Cth) (including the obligation to comply with the National Privacy Principles) as if it were an organisation and ignoring any exemption or concessions in relation to the operation of small businesses. Further, if the Retailer discloses to Metcash personal information of an individual other than the Retailer, the Retailer warrants to Metcash that it has the express consent of that individual to provide that personal information to Metcash for the purposes of this Agreement and the use of the Online Services.

### 4. Warranties

4.1 The *Trade Practices Act 1974* (Cth) and all corresponding State and Territory legislation imply terms, conditions and warranties into some contracts for the supply of goods and services and prohibit the exclusion, restriction and modification of such terms (**Prescribed Terms**). Except as provided for by the Prescribed Terms:

- (1) the Online Services (including all information and data provided using the Online Services) are provided on an "as is" basis without any warranties of any kind;
- (2) Metcash expressly disclaims all warranties of any kind, including implied warranties of merchantability and fitness for a particular purpose;
- (3) Metcash (including its directors, officers, employees and agents) does not warrant that the Retailer's access to the Online Services

will be uninterrupted or that the Online Services will operate error free, that any defects will be corrected or that the Online Services and related servers are free of computer viruses and other harmful data, code, components or other material;

(4) Metcash (including its directors, officers, employees and agents) does not warrant that it will be able to prevent any illegal, harmful or inappropriate use, modification or alteration of the Online Services, including information and data provided via the Online Services, or that it will give notice of such use, modification or alteration; and

(5) Metcash (including its directors, officers, employees and agents) does not warrant or make any representations about the correctness, accuracy, timeliness, completeness, reliability, quality or otherwise of the Online Services, including all information and data provided via the Online Services.

4.2 The use of the Online Services, including all information and data provided via the Online Services, is at the risk of the Retailer.

### 5. Liability

5.1 To the extent permitted by law, Metcash excludes all liability for any loss or damage, including any consequential loss or indirect loss, loss of data or loss of profits, arising in relation to use of the Online Services (including the inability to use the Online Services), whether or not caused by the negligence of Metcash or a Related Entity of Metcash, and whether or not the possibility of loss was known to Metcash or any Related Entity of Metcash.

5.2 The Retailer acknowledges and agrees that:

- (1) it is solely responsible for procuring and maintaining the internet connection in order to use the Online Services (**Internet Connection**);
- (2) it is solely responsible for ensuring the security of the Internet Connection, including avoiding exposure to computer viruses and other harmful data, code, components or other material; and
- (3) it has taken, and will continue to take, such action as is necessary to ensure the security of the Internet Connection.

5.3 The Retailer releases and discharges Metcash and all Related Entities of Metcash from all claims, liabilities, costs and expenses arising out of or relating to the use of the Online Services (including all information and data provided via the Online Services) (**Claims**). This Agreement may be pleaded by Metcash or any Related Entity of Metcash as a full and complete defence to any Claims commenced, continued or taken by or on behalf of the Retailer.

5.4 To the extent permitted by law, the liability of Metcash for breach of any Prescribed Terms is limited at the option of Metcash to the following:

- (1) in the case of services supplied or offered by Metcash, the supply of the services again or the payment of the cost of having services supplied again; and
- (2) in the case of goods supplied or offered by Metcash, the replacement of the goods or the supply of equivalent goods, the repair of such goods, the payment of the cost of replacing the goods or acquiring equivalent goods or the payment of the cost of having the goods repaired.

## 6. Indemnity

- 6.1 The Retailer indemnifies and holds Metcash, its directors, officers, employees and agents and each Related Entity of Metcash and its respective directors, officers, employees and agents harmless from any claim, liabilities, proceedings, loss, cost, expense, demand or damage, including reasonable legal fees, caused by or in any way connected directly or indirectly with the:
- (1) use of, or the inability to use, the Online Services; or
  - (2) information, data or other information submitted or transmitted via the Online Services.

## 7. Intellectual Property

- 7.1 Unless otherwise indicated, Metcash or a Related Entity of Metcash owns or is licensed to use all intellectual property rights (including copyright, trade mark and designs) in connection with the Online Services.
- 7.2 The Retailer must notify Metcash immediately if becomes aware of any third party that is or may be infringing the intellectual property rights in connection with the Online Services. The Retailer must give Metcash reasonable assistance in relation to any infringement proceedings. If a court or Metcash determines that the provision or use of the Online Services has infringed or may infringe a third party's intellectual property rights, Metcash may alter, delete or modify the Online Services in order to avoid continuing infringement.

## 8. Termination

- 8.1 Metcash may terminate this Agreement and access to the Online Services at any time without notice. In the event of termination the Retailer must immediately cease accessing and using the Online Services.
- 8.2 Clauses 3, 4, 5, 6, 7, 8.2 and 9 survive the termination of this Agreement.

## 9. Miscellaneous

- 9.1 **Group benefit:** Metcash holds the benefit of this Agreement (including the indemnity in clause 6.1) for itself and on trust for its Related Entities. Any Related Entity of Metcash is entitled to exercise such rights in accordance with this Agreement as if references to Metcash include any Related Entity of Metcash.
- 9.2 **Assignment:** The Retailer must not assign or otherwise deal with this Agreement except with the prior written consent of Metcash.
- 9.3 **Amendments to this Agreement:** Metcash may amend this Agreement from time to time by notifying the Retailer of the amendment. The Retailer's continued use of the Online Services following any such notice will be deemed to be acceptance of such amendment.
- 9.4 **Entire agreement:** This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.
- 9.5 **Notice:** Metcash may send any notices under this Agreement to the Retailer by email at the email address provided by the Retailer from time to time. Notice is deemed to be received when the email leaves Metcash's computer system.
- 9.6 **Governing law and jurisdiction:** The laws of the State of Victoria govern this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria and of the Commonwealth of Australia.

