

**WORLDSMART RETAIL MAJOR QUOTATION TERMS AND CONDITIONS**  
**EXPLANATORY NOTES**

An Agreement for Worldsmart Retail to supply Deliverables and/or Services to the Customer will come into existence when -

- a) Worldsmart Retail has provided the Customer with these Terms and Conditions; AND
- b) an Order has been placed specifying such Deliverables and/or Services.

Once an Agreement has been entered into in this manner, the Customer can arrange for Worldsmart Retail to supply further Deliverables and/or Services simply by signing additional Quotations which specify those Deliverables and/or Services. It will not be necessary to sign a further Terms and Conditions.

Deliverables may include:

- c) Equipment;
- d) Software; or
- e) Smart Rewards.

Services may include:

- f) Support;
- g) Business Intelligence (as a Professional Service);
- h) other Professional Services; or
- i) Software Services.

Some clauses of these Terms and Conditions apply to all Agreements, while others apply only to the supply of certain types of Deliverables and/or Services. For example, clause 2 (Equipment Sale) only applies where Worldsmart Retail and the Customer have signed a Quotation which provides for the sale of Equipment.

**TERMS and CONDITIONS**

**1. DEFINITIONS & INTERPRETATION**

**1.1. Definitions**

"*Agreement*" means any one or more Orders (with the same Customer Number) together with the applicable clauses of these Terms and Conditions. Each such grouping will be regarded as a separate Agreement.

"*Assumptions*" means any of the assumptions set out in the Quotation for the provision of certain Software Services.

"*Authorized Equipment*" means the Worldsmart Retail authorized equipment, if any, specified in a Quotation, which is validated and certified by Worldsmart Retail to perform as expected with Worldsmart Retail Software.

"*Business Day*" means a day that is not a Saturday, Sunday, or public holiday in the State or Territory as stated in the Customer's address details on the front page of this Agreement.

"*Business Intelligence*" means Worldsmart Retail's business intelligence and data analytics program.

"*Change of Control*" occurs when a person acquires Control of an entity;

"*Commencement Date*" means the date specified in the Quotation for the provision of certain Software Services.

"*Content*" means any data, information, content or other material which is uploaded by the Customer to the Software or Smart Rewards, or which is otherwise generated by the Customer through the operation or use of the Deliverables.

"*Content Outputs*" means any De-Identified Data, any combination, compilation, aggregation, analysis or report of any De-Identified Data and any other data, information, content or other material that is generated from the Content by Worldsmart Retail.

"*Control*" includes the power to directly or indirectly:

- a) dictate the management or policies of the company; or
- b) control the membership of the board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that party or otherwise.

"*Corporations Law*" means the Corporations Act 2001 (Cth), as amended and replaced from time to time.

"*Customer, You and Your*" means the person or entity to whom a Customer Number relates.

"*Customer Delivery Address*" means the address in Australia to which Deliverables are to be delivered (via Freight Forwarding) as notified in writing by the Customer to Worldsmart Retail.

"*Customer Number*" means the unique identifier given by Worldsmart Retail to you and appearing on each Quotation prepared for you by Worldsmart Retail.

"*Customer's Own System*" includes the Customer's entire computer and information technology network and infrastructure (including hardware, software, firmware, communications platforms, cabling and any parts or components of any of the foregoing).

"*De-Identified Data*" means any data, information, content or other material that has been de-identified by Worldsmart Retail so that it does not identify the Customer or its clients.

"*Deliverables*" means any of the Equipment, Software (including any modifications, enhancements, adaptations or developments of or to Software), Smart Rewards and/or Documentation (as applicable).

"*Documentation*" means any manuals and other materials (whether in printed or

including user manuals, programming manuals, modification manuals, flow charts, drawings, instructions and any other similar documentation which have been prepared by or on behalf of Worldsmart Retail to assist or supplement the understanding or application of the Deliverable or Service.

"*Early Termination Charge*" means the amount calculated in accordance with the corresponding item of the Quotation for Software Services, based on the Minimum Term and payable in accordance with clause 6.15a) ii;

"*Equipment*" means the computer and point of sale hardware, components or parts of components and operating manual specified in a Quotation.

"*Equipment Warranty Period*" means the warranty period (if any) for Equipment set out in the Warranty Documentation.

"*Equipment Warranty Services*" means the services described in clause 3.2.

"*Initial Term*" means the initial term specified in the Quotation for the provision of certain Software Services.

"*Insolvency Event*" means, in respect of a party, any one or more of the following events or circumstances:

- a) a winding up, dissolution, liquidation, provisional liquidation, administration or bankruptcy;
- b) that party having a receiver or receiver and User appointed over any of its property or assets, or an administrator, liquidator or provisional liquidator appointed to that party;
- c) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provision of the Corporations Laws or any other applicable law;
- d) seeking protection from its creditors under any applicable law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors; or
- e) any analogous event or circumstance to those described in paragraphs (a) to (d) above under any applicable law of any jurisdiction,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other party.

"*Installation Date*" means:

- a) if installation is not to be carried out by Worldsmart Retail, the date of delivery to the Customer Delivery Address;
- b) if installation is to be carried out by Worldsmart Retail, the date when Worldsmart Retail indicates to the Customer that the Worldsmart Retail installation tests have been passed; or
- c) if installation is to be carried out by Worldsmart Retail but installation is delayed by the Customer for more than fourteen (14) days after the requested delivery date shown in the Quotation, then fourteen (14) days after such date.

"*Intellectual Property Rights*" means all statutory and other proprietary rights (including rights to require information be kept confidential) in respect of know-how, trade secrets, copyright, trademarks, design, patent, semiconductor or circuit layout rights and any application for registration or registration of those rights.

"*Invoice Period*" means the relevant calendar monthly, quarterly, yearly or other period specified as such in an Agreement.

"*Level 1 Support*" has the meaning given to that term in the Schedule.

"*Level 2 Support*" has the meaning given to that term in the Schedule.

"*Level 3 Support*" has the meaning given to that term in the Schedule.

"*Loss*" means any loss, damage, liability, charge, expense, outgoing or cost

(including all legal and other professional costs on a full indemnity basis) of any nature or kind.

"Members" means Smart Rewards members.

"Minimum Term" means the date occurring 12 months from the Commencement Date.

"Normal Business Hours" (excluding in relation to Support where the business hours are set out in the Schedule) means Monday to Friday from 8:30am to 5pm Australian Eastern Standard Time, excluding Australian National public holidays.

"Order" means a Quotation which has been accepted by the Customer (whether by signing or by notice in writing to Worldsmart Retail).

"Password" means a code required to obtain access to the Software or Smart Rewards.

"Permitted Purpose" means:

- a) the incorporation of Content into World smart's Databases;
- b) the use, correction, re-ordering and transformation of the Content for the purposes of the creation, sale, use and licensing of Content Outputs; and
- c) such other purpose agreed between the parties from time to time.

"Personal Information" has the meaning given to it in the Privacy Act.

"Personnel" means a party's officers, employees, agents, contractors and subcontractors.

"PPSA" means the Personal Property Securities Act 2009 (Cth).

"Prepaid Period" in respect of a licence or service charge means the period in respect of which the Customer is required to pay in advance, as specified in a Quotation.

"Price" means the price or charge for a Deliverable or Service as shown in a Quotation, which, for the avoidance of doubt, is exclusive of any freight in the case of a Deliverable unless otherwise stated in the Quotation.

"Privacy Act" means the Privacy Act 1988 (Cth);

"Privacy Law" means:

- a) the Privacy Act;
- b) any legislation from time to time in force in any:
  - i. Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
  - ii. non-Australian jurisdiction (to the extent that the Customer or Worldsmart Retail are subject to the laws of that jurisdiction),
 affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of data; and
- c) any legally binding ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued there under, as amended from time to time.

"Professional Services" means the services described in clause 8.2.

"Quotation" means each such document of that name between Worldsmart Retail and the Customer containing the Customer Number, which is the subject of an Order, and includes any schedule to such quotation.

"Related Entity" has the meaning given to that term in the Corporations Law.

"Scheduled Outages" means any outage of the Software Services which Worldsmart Retail notifies the Customer of at least 1 Business Day in advance.

"Services" means any of the Support or Professional Services.

"Smart Rewards" means Worldsmart Retail's hosted loyalty program, including the customer portal and merchant portal.

"Smart Rewards Software Services" means the provision of access to the licences and other support services in relation to Smart Rewards, as set out in the Quotation and on the terms as documented in clause 6.

"Software" means software (other than Third Party Software) specified in a Quotation or Software Agreement (as applicable), in object code form together with its associated documentation, excluding Smart Rewards.

"Software Agreement" means any agreement with Worldsmart Retail, other than a Quotation, whether prior to or after the Commencement Date, for a licence to Software or the provision of Software Services, including any such agreement entered into by any Related Entity of the Customer.

"Software Licence" has the meaning given to such term in clause 4.4, and means any such licence granted in accordance with that clause.

"Software Manual" means the Worldsmart Retail Software user guide, defining the operational use of the Software and system configuration options available to users (if any).

"Software Services" means:

- a) the provision of access to the licences and other support services as set out in the Quotation and on the terms as documented in clause 6; and
- b) in the case of service degradation per clause 6.14 and/or service suspension per clause 6.16, additionally includes the provision of access to the licences and/or other support services as set out in any Software Agreement.

"Standard Support Services" means from 7:00am - 7:00pm Monday to Friday excluding public holidays in the support time zone indicated in the Quotation.

"Support" means support of the Software and Smart Rewards, to be provided by Worldsmart Retail to the Customer in accordance with clause 7.

"Taxes" means taxes (including Goods and Services Tax "GST"), duties, fees or other government imposts, levies or charges, incurred by Worldsmart Retail as a result of the execution or performance of an Agreement (other than those assessed on the profits of Worldsmart Retail).

"Term" means, for the provision of certain Software Services, the period of time commencing on the Commencement Date and extending for the Initial Term as then extended and/or terminated in accordance with the terms of this agreement.

"Terms and Conditions" means these terms and conditions and any Schedules and/or Annexures hereto.

"Territory" means Australia, unless otherwise specified in a Quotation or any applicable third party licence or end-user licence.

"Third Party Software" means software specified in a Quotation which is licensed by a third party, together with any associated documentation.

"User" means any Personnel of the Customer to whom Worldsmart Retail provides account credentials to use the Software Services.

"Warranty Documentation" means the materials (whether in printed or electronic format) which set out the terms and conditions of any warranty provided in relation to any Equipment.

"Worldsmart Retail, we, us or our" means Worldsmart Retech Pty Ltd ACN 107 563 511 trading as Worldsmart Retail.

"\$" means Australian dollars, unless otherwise stated.

## 1.2. Interpretation

In this Agreement (unless the context requires otherwise):

- a) other grammatical forms of defined words or expressions have corresponding meanings;
- b) a reference to a party is to a party to this Agreement;
- c) a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- d) if something is required to be done on a day that is not a Business Day, then it must be done on the next Business Day;
- e) any reference to a specific time means that time in the relevant time zone indicated in the Quotation;
- f) the word "person" includes a natural person, partnership, body corporate, association, governmental or local authority, agency and any other body or entity whether incorporated or not;
- g) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- h) "includes", "including", "for example", "such as" and similar terms are not words of limitation;
- i) words importing the singular will be deemed to include the plural and vice versa; and
- j) words importing any gender will be deemed to include all other genders.

## 1.3. Paramountcy

To the extent there are any inconsistencies between:

- a) a Quotation; and
  - b) these Terms and Conditions, including any schedules and annexures,
- the earlier named document or part of a document under this clause 1.3 will prevail to the extent of the inconsistency.

## 2. EQUIPMENT SALE

### 2.1. Introduction

This clause 2 only applies where a Quotation provides for the sale of Equipment.

### 2.2. Credit Check Consent

- a) The Customer consents to Worldsmart Retail and each of its Related Entities making enquiries as to the credit status and financial history of the Customer (including using the Customer's Personal Information for this purpose where applicable), and to manage the Customer's account(s) with WorldSmart Retail.
- b) Any Personal Information used by Worldsmart Retail under this clause 2.2 will be used in accordance with Worldsmart Retail's privacy policy (and published on its website from time to time).
- c) Worldsmart Retail's use of the Customer's information (including an Personal Information) may include:
  - i. disclosure to a credit reporting agency or third party information provider;
  - ii. requesting a credit report from a credit reporting agency;
  - iii. confirming Personal Information through a credit reporting agency or

iv. disclosure to a credit reporting agency in order to list default payments.

### 2.3. Order Payment

a) Subject to clause 2.3b):

- i. Unless otherwise stated by Worldsmart Retail, a deposit equal to 50% of the total Quotation will be paid by the Customer not more than fourteen (14) days after acceptance of the Quotation. The Customer acknowledges that failure to pay the full deposit within these timeframes may potentially result in a delayed installation.
- ii. The remaining balance of the total Quotation will be paid by the Customer within fourteen (14) days of delivery to the Customer Delivery Address. However, the Customer acknowledges and agrees that Worldsmart Retail may require the immediate payment of the remaining balance of the Quotation for any Equipment purchased where the date of delivery of Equipment, as specified in the Quotation, has been delayed by the Customer for fourteen (14) days or more beyond the nominated target delivery, target installation or target go-live date (as applicable).

b) Where a credit report obtained by Worldsmart Retail in accordance with clause 2.2c) shows any adverse finding that, in Worldsmart Retail's reasonable opinion, may impact on the Customer's ability to pay for Equipment the subject of a Quotation, Worldsmart Retail may require payment of the total Quotation to be paid by the Customer not more than fourteen (14) days after acceptance of the Quotation or Before the supply of goods / services whichever is the earliest.

### 2.4. Delivery

Worldsmart Retail will sell the Equipment to the Customer and deliver the Equipment to the Customer Delivery Address. Worldsmart Retail will use all reasonable endeavors to deliver the Equipment by the date(s) specified in the Quotation. The Customer acknowledges that some items, including Self Checkouts (SCO's), are custom manufactured for each Order. As such, the Customer accepts that the delivery of these items may be subject to additional manufacturing and international delivery delays outside of the control of WorldSmart Retail.

### 2.5. Title and Risk

Title to the Equipment will pass to the Customer upon payment of the purchase Price in full. Risk of loss of and damage to the Equipment will pass to the Customer upon delivery to the Customer Delivery Address.

### 2.6. Installation

- a) If indicated in the Quotation, Worldsmart Retail will install the Equipment for the installation charges shown in the Quotation. Installation will be carried out at a time negotiated between Worldsmart Retail and the Customer. The Customer will be responsible for certifying that the installation is complete. Failure to advise Worldsmart Retail of any installation issues or omissions will be seen as acceptance of the complete installation and the associated liability.
- b) Worldsmart Retail reserves the right to charge a fee for any location not ready for product installation at the time agreed to by the parties in clause 2.6a). Worldsmart Retail may, at its absolute discretion, waive part or all of this fee.
- c) All fees and charges in respect of installation must be paid by the Customer by the times specified in the Quotation.

### 2.7. Scales and Other Weighing Devices

The Customer remains responsible for seeking the appropriate certification for scales as required by the respective legislation in their State or Territory.

### 2.8. Trade-Ins

Where an Equipment sale has trade-ins, it will be the Customer's responsibility and cost to freight the traded-in property to an address provided by WorldsmartRetail.

## 3. EQUIPMENT WARRANTY

### 3.1. Introduction

This clause 3 only applies where a Quotation provides for the supply of Equipment Warranty Services.

### 3.2. Warranty

Where a manufacturer warranty applies and subject to the manufacturer's terms

and conditions, Worldsmart Retail will coordinate the repair of such equipment with the manufacturer without charge to the Customer provided that the Customer notifies Worldsmart Retail of such non-performance prior to the expiry of the Equipment Warranty Period.

## 4. SOFTWARE LICENCE

### 4.1. Introduction

This clause 4 only applies where a Quotation provides for the supply of Software.

### 4.2. Delivery

Worldsmart Retail will deliver the Software to the Customer Delivery Address. Worldsmart Retail will use all reasonable endeavours to deliver the Software on the date(s) specified in the Quotation.

### 4.3. Title and Risk

Title to the physical media on which Software is delivered will pass to the Customer upon payment of the Price in full. Risk of loss of and damage to such media will pass to the Customer upon delivery to the Customer Delivery Address. Ownership of all Intellectual Property Rights in Software will remain with Worldsmart Retail or (in the case of Third-Party Software) the applicable licensor(s).

### 4.4. Terms of Licence

Where applicable, and without affecting the terms of any applicable Third-Party Software licence terms, Worldsmart Retail grants to the Customer anon-transferable, non-exclusive and non-perpetual licence in the Territory to:

- a) install and/or operate the Software or any portion thereof only in object code form solely for its own internal purposes on the Authorised Equipment (either one or multiple units where so specified);
- b) make copies of the Software solely for the Customer's own backup purposes solely at Worldsmart Retail's discretion and approval,

(Software Licence).

### 4.5. Supply of Software

For the purpose of the Software Licence, Worldsmart Retail will either:

- a) supply the Customer with a copy of the Software, in which case the Customer agrees to accept responsibility for the installation of such Software; or
- b) authorise the Customer to make a copy of the Software from the copy of the Software initially supplied by Worldsmart Retail.

### 4.6. Commencement of Software Licence

The Software Licence will commence on the Installation Date.

### 4.7. Warranty - Software

- a) Worldsmart Retail warrants that upon commencement of the Software Licence, the Software (but not including Third Party Software) will operate in substantial conformity with these specifications.
- b) Where the Software does not so operate, Worldsmart Retail will use all reasonable endeavours to investigate the error or malfunction responsible for such non-conformity and to correct or circumvent it, provided that the Customer notifies Worldsmart Retail of such non-conformity within sixty (60) days of the commencement of such Software Licence. The Customer acknowledges that, due to the nature of the Software, the operation of the Software may not be uninterrupted or error free, and that not all errors are able to be rectified by error correction or avoidance action. Worldsmart Retail's liability to the Customer where the Software does not operate in substantial conformity with the above specifications is set out in clause 13.

### 4.8. Warranty - Third Party Software

In the case of any Third-Party Software supplied to the Customer under this Agreement, Worldsmart Retail will use its best endeavours to coordinate the repair or replacement of such Third-Party Software with the licensor without charge to the Customer provided that the Customer notifies Worldsmart Retail of such non-performance prior to the expiry of the applicable warranty period.

### 4.9. Authorised Equipment

Where Authorised Equipment is specified:

- a) the Software Licence will be restricted to installation into, operation on and/or transmission to the Authorised Equipment;
- b) the Customer is authorised to temporarily transfer the Software Licence to a nominated alternate unit of the Authorised Equipment while the nominated unit or an associated unit required for use of the Software is temporarily inoperable until operable status is restored and processing on the nominated alternate unit is completed;

- c) where the Customer upgrades or modifies the Authorised Equipment, then subject to payment to Worldsmart Retail for any applicable additional Software Licence and/or Support charges appropriate to the upgrade or modification, the Customer may transfer the Software Licence to the upgraded or modified unit which will then become the Authorised Equipment;
- d) where the Authorised Equipment has been supplied by the Customer or by a third party and the Customer proposes to modify it in any manner (whether by replacement, upgrade, downgrade or otherwise) the Customer's Software Licence will not apply to the modified Authorised Equipment unless the Customer has obtained Worldsmart Retail's prior consent;
- e) the Customer warrants that no additional software or software not approved by Worldsmart Retail will be placed on the Authorised Equipment without Worldsmart Retail's consent; and
- f) the Customer warrants that they will not interface any third-party systems or hardware to the Authorised Equipment directly or by the means of any middleware or similar system.

#### 4.10. Restrictions on Use

The Customer will not, and will ensure that no other person (including without limitation its employees, contractors or agents) will:

- a) make modifications to any Software;
- b) merge any Software with any other software or data;
- c) interface to, or utilise, any other third-party software without prior consent from Worldsmart Retail;
- d) access database tables or modify data except via the appropriate methods as defined by Worldsmart Retail or in any way utilise the software in a method not defined by Worldsmart Retail;
- e) modify or reproduce any documentation associated with any Software, or any part thereof, for use by any third party, noting that the Customer is able to do this for its own internal business purposes;
- f) reverse assemble, reverse compile or otherwise reverse engineer any Software in whole or in part;
- g) make any Software available to any third party for any purpose; or
- h) allow any Software to be used simultaneously by more than the maximum number of simultaneous users specified in the Quotations for such Software.

#### 4.11. Periodic charges

Where a periodic license charge is indicated in the Quotation, the Software Licence granted in clause 4.4 is granted only for the Prepaid Period. Such Software Licence will continue to be renewed automatically for each subsequent Prepaid Period unless terminated by the Customer by giving Worldsmart Retail ninety (90) days' notice prior to the expiry of the Prepaid Period.

#### 4.12. Termination

The Software Licence will terminate at the end of the applicable term as renewed from time to time in accordance with this Agreement, or as terminated earlier in accordance with this Agreement. Worldsmart Retail may not terminate any Software Licence during the term except for breach by the Customer of these Terms and Conditions under and in accordance with clause 20. If Worldsmart Retail terminates a Software Licence for breach, Worldsmart Retail may exercise any other right or remedy available to it. Promptly following the termination of these Terms and Conditions, any Agreement or the Software Licence, the Customer will, as Worldsmart Retail directs, return or destroy the original and all copies of any Software received from Worldsmart Retail or made pursuant to these Terms and Conditions, any Agreement or the Software Licence, as the case may be, and certify to Worldsmart Retail in writing that such action has been taken. This requirement will apply to all copies on any media including translations whether partial or complete and whether or not merged into other software material as authorised herein. With prior authorisation from Worldsmart Retail, the Customer may retain a copy of the Software for archive purposes only.

#### 4.13. Assignment to licensors

If for any reason Worldsmart Retail loses the right to license any Software to the Customer, Worldsmart Retail reserves the right to assign its rights and obligations hereunder to its licensors and the Customer hereby consents to such assignment.

#### 4.14. Disposal of media

The Customer will ensure, prior to disposing of any media (being tapes, disks, paper, cassettes and any other data processing media), that any Software contained on it has been erased or otherwise destroyed.

#### 4.15. Audit

Worldsmart Retail and its licensors will be entitled on reasonable notice to the Customer to audit or have audited the use of the Software by the Customer.

#### 4.16. Third party licences

Certain Software supplied by Worldsmart Retail may be licensed to Worldsmart Retail by a third party who has given Worldsmart Retail the right to market it to the Customer. Such Software may be subject either to licensing terms and conditions specified by that third party, which accompany the Software, or to the terms and conditions of an end user licence agreement supplied with the Software in shrink wrapped or other form, and which totally replaces clauses 4.3 to 4.15. The Customer agrees to be bound by any such terms and conditions and to indemnify Worldsmart Retail against any Loss Worldsmart Retail may incur or suffer as a result of the Customer's failure to observe or perform those terms and conditions.

### 5. SMART REWARDS

#### 5.1. Introduction

This clause 5 only applies where a Quotation provides for the supply of Smart Rewards and Smart Rewards Software Services.

#### 5.2. Delivery

Installation of Smart Rewards will take place on an agreed date. The provision of the Smart Rewards Software Services will be in accordance with the terms of clause 6 below.

#### 5.3. Title and Risk

Title to Smart Rewards does not change hands. Smart Rewards remains the property of Worldsmart Retail and this Agreement entitles you to use Smart Rewards for the specified term of the Agreement. Ownership of all Intellectual Property Rights in Smart Rewards shall remain with Worldsmart Retail or its licensors.

#### 5.4. Terms of use

Worldsmart Retail grants to the Customer a non-transferable, non-exclusive licence in the Territory to operate Smart Rewards or any portion thereof only in object code form, solely for its own internal purposes, on one unit of Equipment (or multiple units where so specified in the Quotation), (**Smart Rewards Licence**). Additional provisions for the terms of use are documented in clause 6 below.

Any other use of Smart Rewards is prohibited. Usage charges are calculated on the basis that Smart Rewards will only be executed or operated as permitted by this clause 5.

#### 5.5. Supply of Smart Rewards

The Customer will not receive a copy of Smart Rewards. Smart Rewards is hosted externally to the Customer's premises and is installed in an offsite secure environment.

#### 5.6. Commencement of Smart Rewards Licence

The Smart Rewards Licence will commence when Worldsmart Retail sets up the nominated sites within Smart Rewards.

#### 5.7. Nominated representative

The Customer agrees to appoint a nominated representative to act as the point of contact for all support queries generated from the Smart Rewards system.

#### 5.8. Warranty

Worldsmart Retail warrants that upon commencement of the Smart Rewards Licence, Smart Rewards will operate in substantial conformity with its published specifications. Where Smart Rewards does not so operate, Worldsmart Retail will (as the Customer's sole remedy and Worldsmart Retail's sole liability) use all reasonable endeavours to investigate the error or malfunction responsible for such non-conformity and to correct or circumvent it, provided that the Customer notifies Worldsmart Retail of such non-conformity within thirty (30) days of the commencement of such Smart Rewards Licence. The Customer acknowledges that, due to the nature of Smart Rewards, the operation of Smart Rewards may not be uninterrupted or error free, and that not all errors are able to be rectified by error correction or avoidance action.

#### 5.9. Hardware connections

The Customer agrees that for the Smart Rewards loyalty system to function it requires certain hardware connections including access to the internet. It is the Customer's obligation to ensure that these connections are maintained.

#### 5.10. Administration

Both parties agree that Worldsmart Retail will establish and maintain the Smart Rewards loyalty program.

#### 5.11. Points Liability

The client acknowledges that WorldSmart Retail assumes no financial liability for points balances. Furthermore, the client acknowledged that they have sought the appropriate financial advice relating to the correct recognition of any points liability.

#### 5.12. Fraud, Hacking, Malicious Damage and Theft

WorldSmart Retail will make its best endeavours to ensure that the Smart Rewards database and associated systems are secure and resistant to hacking and other malicious activities.

The client acknowledges that the risks imposed by a malicious third party or internal agent, corrupting, stealing and conducting fraudulent transactions is outside of the control of WorldSmart Retail. WorldSmart Retail accepts no responsibility, financial or otherwise for such activity. Nor will WorldSmart Retail reimburse the Customer's clients (cardholders) for lost, stolen or corrupted points. Moreover, WorldSmart Retail will not be liable for damages arising from the misuse or theft of Personal Information from the SmartRewards systems.

#### 5.13. Ownership

The Smart Rewards loyalty program remains the property of Worldsmart Retail. This Agreement allows the Customer to use the Smart Rewards loyalty program for the agreed term only. Ownership and title of the Smart Rewards program does not pass to the Customer at any time prior, during or after the agreed term.

#### 5.14. Restrictions on use

The Customer will not, and will ensure that no other person (including without limitation its employees, contractors or agents) will:

- a) make modifications to Smart Rewards;
- b) merge Smart Rewards with any other software or data;
- c) modify or reproduce any documentation associated with Smart Rewards or any part thereof;
- d) reverse assemble, reverse compile or otherwise reverse engineer Smart Rewards in whole or in part; or
- e) make Smart Rewards available to any third party for any purpose.

#### 5.15. Periodic charges

Where a periodic licence charge is indicated in the Quotation, the Smart Rewards Licence granted in clause 5.4 is granted only for the Prepaid Period. Such Smart Rewards Licence will continue to be renewed automatically for each subsequent Prepaid Period unless terminated by the Customer by giving Worldsmart Retail ninety (90) days' notice prior to the expiry of a Prepaid Period.

#### 5.16. Termination

Worldsmart Retail may not terminate any Smart Rewards Licence during the term except for breach by the Customer of these Terms and Conditions under and in accordance with clause 20. If Worldsmart Retail terminates a Smart Rewards Licence for breach, Worldsmart Retail may exercise any other right or remedy available to it. Promptly following the termination of these Terms and Conditions, any Agreement or the Smart Rewards Licence, the Customer will, as Worldsmart Retail directs, return or destroy the original and all copies of Smart Rewards received from Worldsmart Retail or made available pursuant to these Terms and Conditions or any Agreement to which Smart Rewards relates, as the case may be, and certify to Worldsmart Retail in writing that such action has been taken. This requirement will apply to all copies on any media including translations whether partial or complete and whether or not merged into other software material as authorised herein.

#### 5.17. Audit

Worldsmart Retail and its licensors will be entitled on reasonable notice to the Customer to audit or have audited the use of Smart Rewards by the Customer.

### 6. SOFTWARE SERVICES

#### 6.1. Introduction

- a) This clause 6 only applies where a Quotation (or for the purposes of clause 6.14 and 6.16, a Quotation or Software Agreement) provides for the supply of Software Services.
- b) Worldsmart Retail agrees to supply the Software Services and associated Documentation to the Customer, and the Customer agrees to acquire them from Worldsmart Retail, at the prices set out in the Quotation and on the terms of this clause 6.
- c) The Software Services are supplied to the Customer on a non-exclusive and non-transferable basis.
- d) Worldsmart Retail will provide the Software Services with due care and skill, but does not guarantee they will be continuous or fault free.
- e) The Software Services are sold as a non-perpetual ongoing fee-based solution. Failure to pay the required fees by the required dates may result in restrictions of use as set out in clause 6.14.

#### 6.2. Software Services Term

- a) The provision of the Software Services will commence on the Commencement Date specified for those Software Services and continue for the Initial Term (unless extended or terminated in accordance with these terms), which may be either a standard initial term of Twelve (12) months or a non-standard initial term of another time period (which Worldsmart Retail may agree to at its sole discretion and in which case additional fees and/or limitations may apply).
- b) At the end of the Initial Term and each renewal term, the Term will automatically extend for successive periods of 12 months on the

existing terms and conditions (including price), unless either party notifies the other (at least 20 Business Days before any automatic extension) that it does not want the Term to extend automatically or this Agreement has otherwise been terminated in accordance with its terms.

#### 6.3. Implementation

- a) Worldsmart Retail will promptly implement the Software or Smart Rewards, as applicable, ready for use by the Customer as part of the Software Services after the Commencement Date.
- b) The Customer must work with Worldsmart Retail promptly and in good faith (including by providing all information and assistance Worldsmart Retail requests) to allow Worldsmart Retail to complete the creation and setup of the Customer's access to the Software or Smart Rewards, as scheduled by Worldsmart Retail. Charges may apply if the information provided by the Customer is incomplete or inaccurate.
- c) Worldsmart Retail will notify the Customer when the Software or Smart Rewards, as applicable, is ready for use.
- d) Each of the Customer's Users will be assigned a Password to enable them to access the Software Services.

#### 6.4. Restrictions

The following restrictions, as may be modified in accordance with clause 6.17(d), apply to the use of all Software Services:

- a) the Software or Smart Rewards can only be used on Authorised Equipment;
- b) should WorldSmart Retail approve a client's existing hardware, the approval will, unless stated otherwise, be for a duration of no more than two (2) years, at which time the Customer must seek a new approval or purchase new hardware from WorldSmart Retail;
- c) the Software or Smart Rewards must not be interfaced, connected, integrated or in any way linked with any software, system or service other than that authorised by WorldSmart Retail;
- d) the Customer must not, and must procure that its Personnel does not, provide access to the Software or Smart Rewards to anyone outside of the direct employment and control of the Customer, which for the avoidance of doubt includes any of Worldsmart Retail's direct competitors and the Customer's wholesalers;
- e) the Customer must source only from WorldSmart Smart Rewards cards to preserve number range integrity; and
- f) the Customer must not provide access to any Software or Smart Rewards system to anyone other than authorised Personnel of the Customer.

#### 6.5. Change of Control

- a) A Change of Control of the Customer using the Software Services will constitute an assignment requiring WorldSmart Retail's prior written consent.
- b) WorldSmart Retail will not withhold its consent unreasonably to assignment of the Customer to a related company or successor company operating the same business.
- c) The Customer must notify WorldSmart Retail as soon as practicable of any proposed Change of Control or transfer of its business to which this clause 6 relates.

#### 6.6. Maintenance and support

- a) Worldsmart Retail agrees to use its reasonable endeavours to provide Support for the Software Services, which will be provided on the terms of clause 7 below.
- b) From time to time, the Software Services will be unavailable due to maintenance. Reasonable endeavours will be taken to program Scheduled Outages so as to limit their impact on the Customer's business.
- c) The Customer acknowledges that Software Services may be interrupted by factors beyond Worldsmart Retail's direct control and that Worldsmart Retail will have no liability for such Software Service interruptions.

#### 6.7. Other services

From time to time, the Customer may request that Worldsmart Retail provides additional services in connection with the Software Services. Worldsmart Retail may charge the Customer additional fees which will be based on Worldsmart Retail's (or its third-party supplier's) then current rates and charges. Additional terms and conditions may also apply, on the applicable terms of this Agreement as notified by Worldsmart Retail to the Customer and provided in a separate Quotation or written proposal.

#### 6.8. Modifications and updates

- a) Worldsmart Retail may modify or update the Software Services at any time during the Term, by giving the Customer prior reasonable notice (but not less than 10 Business Days).

- b) If, in the Customer's reasonable opinion, a modification or update has a material and adverse impact on the features and functionalities of the Software Services, the Customer may terminate the provision of the Software Services without the payment of any Early Termination Charge, provided the Customer gives Worldsmart Retail written notice of such termination within 5 Business Days of the implementation of the relevant modification or update.

#### 6.9. Security - Passwords

- a) The Customer only provide Password information and permit access to and use of the Software Services by Users in accordance with the applicable restrictions set out in this clause 6.
- b) Only a User who has been granted a Password may access and use the Software Services.
- c) The Customer must procure that each User maintains the security and secrecy of their Password.
- d) A User must not permit any other person to access, use or modify Software Services by using that User's Password.

#### 6.10. Third party content

The Software Services may link to third party websites or feeds which are connected or relevant to the Software Services. The availability of any link from the Software Services does not imply that Worldsmart Retail endorses, approves, recommends, or accepts responsibility for, those websites or feeds, or their content or operators. To the maximum extent permitted by law, Worldsmart Retail excludes all responsibility and liability for those websites and feeds.

#### 6.11. Customer obligations

Without limiting the Customer's other obligations under this Agreement, the Customer:

- a) must provide Worldsmart Retail with all information, material and assistance requested to enable Worldsmart Retail to provide the Software Services to the Customer;
- b) must use the Software or Smart Rewards in accordance with the Documentation and all directions provided by Worldsmart Retail;
- c) must comply with the restrictions set out in these terms and conditions and all applicable laws when using the Deliverables;
- d) must obtain or procure all necessary rights to use the Content and associated data that will be used in connection with the Software Services;
- e) must ensure that the Customer's Own System complies with the relevant specifications notified by Worldsmart Retail from time to time;
- f) must not undermine the operation, security and integrity of the Software or Smart Rewards, including by introducing any virus, malicious code or other similar item;
- g) must not use the Software or Smart Rewards in any way that may impair the ability of Worldsmart Retail's other customers to use the Software or Smart Rewards;
- h) must not use the Software or Smart Rewards to view, access or copy any material or data other than that which the Customer are expressly authorised to access;
- i) must not access or use the Deliverables for the purpose of creating a product or service which competes with the Software Services;
- j) must not resell, resupply or share the Deliverables and the Customer must not permit third parties to access or use the Deliverables, except as authorised by Worldsmart Retail in writing;
- k) is solely responsible for selecting, supplying and maintaining its own facilities and equipment (including hardware, software and access to the internet) for use in connection with the Software Services; and
- l) is solely responsible for any use of the Deliverables by it or any third party, whether authorised or not;
- m) must provide high availability internet services and high-quality consistent power supply to all WorldSmart systems; and
- n) must not relocate, unplug, de-power or otherwise change any Hardware settings.

#### 6.12. Fees and Payment

- a) The Customer must pay Worldsmart Retail the fees set out in the Quotation for the Software Services.
- b) Unless otherwise stipulated, the fees do not include GST and in addition to the fees the Customer must pay applicable GST.
- c) The fees will be billed monthly in advance, and are payable on the 21st day of each month or the next working day via direct debit.
- d) Subject to clause e), the Customer must pay all other amounts payable to Worldsmart Retail in respect of the Software Services (other than fees to which clause 6.12c) applies) within 14 days of the date of invoice or as

otherwise notified in writing.

- e) If a genuine dispute arises regarding the amount of a fee for the Software Services, the Customer may suspend payment of the disputed amount pending resolution of the dispute but must pay all other amounts due and owing in accordance with this clause 6 and any other amounts payable under this Agreement.

- f) Worldsmart Retail may charge the Customer interest (calculated on a daily basis) on any unpaid amount overdue by more than 14 days at the rate of two percent (2%) per annum above the published current Commonwealth Bank Monthly Corporate loan reference rate.

#### 6.13. Audit rights

- a) From time to time, Worldsmart Retail may require an audit of relevant records to verify the Customer's accurate disclosure of any information which is required to enable the calculation of fees payable to Worldsmart Retail and to verify the Customer's compliance with other obligations under this clause 6.
- b) The audit may be conducted by Worldsmart Retail's officers and/or employees and/or third parties engaged by the Customer to assist with the audit.
- c) The Customer will provide access to and provide copies of any information required in connection with the audit and will ensure that all other relevant parties also provide access to and copies of information required for the purposes of the audit.
- d) If the audit reveals that the Customer has underpaid fees or identifies any other non-compliance with this Agreement, then the Customer must:
- promptly pay any underpayment of fees to Worldsmart Retail together with interest, calculated in accordance with clause 6.12f);
  - remedy any other non-compliance with those obligations; and
  - pay Worldsmart Retail an amount equivalent to the costs incurred by it in connection with the conduct of the audit.

#### 6.14. Service Degradation and Termination on Non-Payment

Failure to pay the appropriate fee structure may trigger the decay and termination of the Software Services. The following degradation of Software Services may occur if payment is not made within the timeframes set out below:

- a) For SmartRetail, WinPOST and Group Controller:
- Thirty (30) days after the account falls due - All support for the account is terminated. All external integrations such as Host-file support (pricing files) are suspended. Prices cannot be updated between, Group Controller (if provided), SmartRetail and WinPOST.
  - Sixty (60) days after the account falls due - All reporting and data extraction capabilities will cease. All integrations with other WorldSmart software will also cease.
  - Ninety (90) days after the account falls due - All logins terminate and the system can no longer be accessed by the client.
- b) For Business Intelligence, SmartRewards and E-Commerce:
- Thirty (30) days after the account falls due - All interfaces will cease.
  - Sixty (60) days after the account falls due - All logins terminate and the system can no longer be accessed by the client.

#### 6.15. Software Service - Termination for Convenience

- a) In addition to the termination provisions set out in clause 20:
- Worldsmart Retail may terminate this Agreement for the provision of Software Services at any time and without cause by providing the Customer with not less than 3 months' written notice of termination; and
  - the Customer may terminate this Agreement for the provision of Software Services at any time without cause by providing Worldsmart Retail with 3 months' written notice of termination provided that:
    - if such termination takes effect after the Minimum Term, then the Customer must pay in full (x) all amounts payable under this Agreement up until the date of termination plus (y) the applicable Early Termination Charge; and
    - if such termination takes effect before the completion of the Minimum Term, then the Customer must pay in full (x) all amounts payable under this Agreement up until the date of termination plus (y) all amounts otherwise payable under this Agreement up until the end of the Minimum Term plus (z) the applicable Early Termination Charge, and in all cases, clause 20c) will apply.

- b) The Customer agrees that any amounts charged in accordance with clause 6.15a) ii is a genuine pre-estimate of the loss Worldsmart Retail is likely to suffer as a result of the early termination of this Agreement.

**6.16. Software Services - Suspension**

- a) Worldsmart Retail may suspend the supply or performance of the Software Services at any time without notice to the Customer:
- i. if the Customer is subject to an Insolvency Event, except to the extent that a stay on the exercise of such a right applies under sections 415D - 415G, 434J - 434M or 451E - 451H of the Corporations Act;
  - ii. if the Customer fails to pay any amount due to Worldsmart Retail under this Agreement or a Software Agreement (as applicable) when due; or
  - iii. if Worldsmart Retail or a third-party supplier reasonably suspects that the Customer is in breach of its obligations under this Agreement.
- b) To the maximum extent permitted by law, Worldsmart Retail excludes all liability to the Customer if it suspends the Software Services under this clause 6.16.
- c) The suspension of the Software Services under this clause 6.16 may continue until Worldsmart Retail notifies the Customer that it has received full payment of the overdue amount.

**6.17 Pricing and Terms Variation**

- a) The fees for the Software Services are based on the Assumptions set out in the Quotation. If, at any time during the Term, Worldsmart Retail determines (in its reasonable discretion) that the Assumptions are incorrect in any respect, Worldsmart Retail may increase the fees for the Software Services by giving the Customer no less than 30 Business Days' notice.
- b) Worldsmart Retail may in its discretion review and increase fees in line with CPI movement, provided that such increases are not made more than annually.
- c) In addition to Worldsmart Retail's right under clause 6.17a) and b), Worldsmart Retail may vary the fees for the Software Services at any time during the Term, for any reason, by giving the Customer at least 30 Business Days' notice. However, if the Customer does not wish to pay the fees increased under this clause 6.17(c), the Customer may terminate this Agreement by giving Worldsmart Retail 10 Business Days' written notice, provided such notice is received by Worldsmart Retail before the effective date of the fee increase. If the Customer does not terminate this Agreement in accordance with this clause c), the Customer is deemed to have accepted the increased fees.
- d) Worldsmart Retail may amend or add to the restrictions set out in clause 6.4 at any time during the Term, if required to do so by any third-party supplier.

**7. SUPPORT**

**7.1. Introduction**

This clause 7 only applies where a Quotation provides for the supply of Support.

**7.2. Continuation of Support**

WorldSmart does not warrant that the current version of Software will be supported for a defined period. It will however use its best endeavours to advise of changes to the support arrangement of given software.

**7.3. Assignment**

WorldSmart reserves the right to outsource any and support and maintenance functions to their parties both in Australia and overseas.

**7.4. Access to Patches and Enhancements**

The client acknowledges that only current paid up clients who have maintained interrupted support maintenance payments over the last three (3) years will be entitled to access maintenance and enhancement patches.

**7.5. Periodic Support Releases**

The client acknowledges that from time to time, periodic updates to the Software will be made available to clients to support bug fixes, security patches etc. The client accepts that failure to apply these releases, apply them in a timely manner or allow WorldSmart to apply them will at their discretion void the support agreement without an entitlement to a refund.

**7.6. Periodic Enhancement Releases**

The client acknowledges that from time to time, periodic updates to the Software will be made available to clients to support new features and functionality. The client accepts that failure to apply these releases, apply them in a timely manner or allow WorldSmart to apply them will at their discretion void the support agreement without an entitlement to a refund.

**7.7. Failure to maintain periodic support**

- a) The client acknowledges that support and maintenance is critical function of the Software suite and accepts all risks should it elect to not maintain

support and maintenance services offered to it by Worldsmart Retail from time to time.

- b) The client acknowledges that support may not be provided on an ad hoc basis and as such any request to provide support will be provided at Worldsmart Retail's discretion, and on such commercial terms as Worldsmart Retail may require.

**7.8. Commencement and termination**

- a) Support will commence, where applicable, on:
- i. in relation to the Software, the date of commencement of the Software Licence; and
  - ii. in relation to Smart Rewards, the date of commencement of the Smart Rewards Licence described in clause 5.4, and payment will commence as set out in clause 7.10.
- b) Worldsmart Retail may withdraw Support at any time twelve (12) months or more after its commencement provided that it gives the Customer six (6) months' notice.
- c) Except for Software or Smart Rewards (as applicable) which is the subject of a combined periodic licence and support charge, the Customer may terminate Support at any time twelve (12) months or more after its commencement provided that it gives Worldsmart Retail ninety (90) days' notice to take effect at the end of any Prepaid Period.

**7.9. Documentation**

Where Worldsmart Retail provides the Customer with a copy of any documentation made available by Worldsmart Retail's licensors for the purpose of updating the Software Manual, the Customer will update the Software Manual by including that documentation.

**7.10. Fees and payment**

- a) The Customer agrees to pay the Support fees described in the Quotation to Worldsmart Retail in return for the Support.
- b) Unless otherwise stated in an Agreement:
- i. the Support fees are due and payable monthly in advance by direct debit or credit card authority;
  - ii. a transaction fee of 3% will apply to Diners Club or American Express transactions; and
  - iii. the first payment of the Support charge shown in the Schedule will become due and payable on the first occurrence of the 21st day of the month (or such other date agreed between the parties) following commencement of the Support and will be for the first full Invoice Period plus any part Invoice Period prior to the commencement of such full Invoice Period. Subsequent Support charges will be due and payable by the 21st day of each subsequent month (or such other date agreed between the parties).
- c) If payment is not received for an invoice issued to the Customer for Support when it is due and payable, Worldsmart Retail may choose to withhold Support until payment is made.

**8. PROFESSIONAL SERVICES**

**8.1. Introduction**

This clause 8 only applies where a Quotation provides for the supply of Professional Services.

**8.2. Scope**

"Professional Services" means implementation, training, systems configuration, Software modification, consultancy, project management or other services specified in a Quotation, but excluding any Software Services for which the terms of clause 6 will apply.

In return for the payment of the charge indicated in the Quotation, Worldsmart Retail will provide the Professional Services to the Customer.

**8.3. Customer Responsibilities**

The Customer must ensure that no events that are the responsibility of the Customer will cause delays in the completion of the Professional Services. For example, for a new store, shop fitting, electrical and communication work would need to be completed before Worldsmart Retail installation work commences.

**8.4. Worldsmart Retail's Responsibilities**

Worldsmart Retail will provide the Professional Services in return for the payment of the charge indicated in the Quotation for the period described in the Quotation using all reasonable endeavours to achieve any time scales agreed between the Customer and Worldsmart Retail.

Professional Services will normally be carried out during Normal Business Hours. Services requested outside of Normal Business Hours may incur a specified uplift.

**8.5. Data Migration**

In the case of Worldsmart Retail being engaged to complete a Change of Ownership, the Customer acknowledges that Worldsmart Retail does not warrant

the validity or accuracy of the data in the migrating system and that the responsibility for due diligence remains the sole responsibility of the Customer. Professional Services will normally be carried out during Normal Business Hours. Services requested outside of Normal Business Hours may incur an additional fee.

#### **8.6. Change of Ownership**

The Customer acknowledges that Worldsmart Retail is not liable for any incorrect information, delays and omissions provided by the Customer or the Customer's related third-party entities e.g. warehouse or banks.

#### **8.7. Completion**

Worldsmart Retail will be deemed to have completed the Professional Services:

- a) when Worldsmart Retail has complied with the acceptance/completion criteria (if any) specified in the Quotation;
- b) if no acceptance/completion criteria are specified, when Worldsmart Retail notifies the Customer of completion; or
- c) where the Professional Services are provided on a time and materials basis, once the Professional Services are completed.

At the completion of a Professional Service, the Customer or a Customer representative will be required to agree that the Professional Service has been completed. For an installation related Professional Service, testing will be performed at the conclusion of the installation by Worldsmart Retail in the presence of the Customer or a Customer representative. The Customer will not unreasonably withhold its agreement that the Professional Service has been completed if the testing reasonably demonstrates that the Deliverables or other requirements set out in the Quotation have been met and are free of material defects. The Customer will promptly issue a notice to Worldsmart Retail confirming its agreement to the completion.

#### **8.8. Delays**

If a Professional Service is delayed such that Worldsmart Retail staff or contractors are required to remain on the Customer's premises after the expected completion time, or a subsequent visit by Worldsmart Retail or a contractor is required, Worldsmart Retail will not be entitled to any further charges if the delay resulted from an event that is the responsibility of Worldsmart Retail. However, if the delay resulted from an event that is the responsibility of the Customer, Worldsmart Retail will be entitled to charge for the additional time spent at the rates specified in the Quotation, plus any additional accommodation, travel, freight and technician charges.

#### **8.9. Changes**

The Customer may at any time request, and Worldsmart Retail may at any time recommend, changes to the Professional Services. Neither party will be obliged to agree to any requested or recommended change, except that neither party will unreasonably withhold its agreement to any such change. Worldsmart Retail will advise the Customer of the likely impact of any requested or recommended change on the price and time scale for the Professional Services. Any agreement to a requested or recommended change will only become valid as an amendment to an Order once it has been expressed in writing and signed by an authorised representative of both parties.

#### **8.10. Software**

Where the Professional Services consist of the modification, enhancement, adaptation or development of Software, the Customer is granted a non-exclusive, limited licence to use the modified, enhanced, adapted or developed Software under these Terms and Conditions and any applicable Agreement. Whilst Worldsmart Retail will generally, provide integration and unit testing as part of its general software development routines, it remains the Customer's responsibility for complete User Acceptance Testing. Unless stated otherwise, Software provided under Professional Services is not subject to a warranty period and as such, the Software is deemed to be accepted once invoiced. Unless otherwise stated in the quotation, all intellectual property rights generated in the creation and any modification of the Software remains the property of Worldsmart Retail and the client has no claims to future revenue arising from its sale.

### **9. CHARGES & PAYMENTS**

#### **9.1. Invoice and payment**

Except where otherwise stated in an Agreement or in this clause 9, Worldsmart Retail will invoice the Customer on delivery for the Price of each Deliverable or for the provision of a Service. The Customer will pay to Worldsmart Retail the Price of the Deliverable or Service (as adjusted in accordance with this clause 9, if applicable) and any installation charges and or other applicable Professional Services as invoiced. All Prices and charges will be invoiced to the Customer when they become due and shall be payable no later than fourteen (14) days from the date of invoice.

#### **9.2. Invoice Discrepancies**

Should the Customer dispute a portion of the invoice, any undisputed point must be paid by the date on the original invoice.

#### **9.3. Interest**

Worldsmart Retail may charge interest on a daily basis on any overdue amount from the date on which such amount becomes payable, at the rate of two percent (2%) per annum above the published current Commonwealth Bank Monthly Corporate Loan Reference Rate.

#### **9.4. Taxes**

- a) All taxes will be paid by the Customer. The Price of any Deliverable or Service includes Australian customs duty and sales tax where applicable. The Price of any Deliverable or Service does not include GST. Where GST is applicable, GST will be charged and the Customer must pay GST in addition to the Price of a Deliverable or Service. Taxes are calculated at the rates current at the date of the relevant Quotation. If at any time after that date any existing Taxes are varied or abolished, or any new Taxes are incurred, the total charges will be adjusted accordingly.
- b) Any amount of GST which the Customer is invoiced in accordance with clause 9.4a) above (**GST Amount**) must be paid by it in full and without deduction regardless of any entitlement it may have to a credit or offset however arising. However, if it is found that:
  - i. the GST Amount paid or payable by the Customer in respect of a Deliverable or Service is different from the amount of GST payable at law by Worldsmart Retail on the supply of that Deliverable or Service; and
  - ii. an adjustment of that GST Amount is made between Worldsmart Retail and the relevant taxing authority,then Worldsmart Retail and the Customer must make the same adjustment to the GST Amount that the Customer has paid or is otherwise required to pay in accordance with clause 9.4a) above.

#### **9.5. Software**

If a Quotation provides for the supply of Software, one time/initial charges (if any) shown in the Quotation are due upon commencement of the Software Licence to which the charges relate. If periodic charges are shown in the Quotation, the first payment is due upon commencement of the Software Licence to which the charges relate and will be for the first full Invoice Period plus any part Invoice Period prior to the commencement of such full Invoice Period. Subsequent periodic charges will be due and payable on the first day of each subsequent Invoice Period.

#### **9.6. Remote customer sites**

Worldsmart Retail may make additional charge for the time and travelling expense of its services personnel in respect of Services which are to be provided at a Customer premises in excess of fifty (50) kilometers from Worldsmart Retail's nearest service centre.

#### **9.7. Consumables**

Unless specifically included in the Price, the Customer will pay separately for all magnetic media, stationery, consumables (including without limitation print heads, print bands, toner cartridges and drums) and any other goods supplied by Worldsmart Retail.

### **10. INSURANCE**

#### **10.1. Insurance policies**

Worldsmart Retail must maintain to the satisfaction of the Customer, and at Worldsmart Retail's own cost, comprehensive insurance policies in relation to any liability arising out of an Agreement and ensure that its subcontractors have sufficient insurance for the goods and services they will supply in relation to an Agreement including:

- a) professional indemnity insurance for no less than \$2,000,000 per claim;
- b) product liability insurance for no less than \$20,000,000 per claim; and
- c) public liability insurance for no less than \$20,000,000 per claim.

#### **10.2. Claims made**

If a policy of insurance is a "claims made" or "claims made and notified" policy, Worldsmart Retail agrees to keep it or a "tail out" policy satisfactory to the Customer in place for three (3) years after the later of termination or expiration of the Agreement to which the insurance relates.

#### **10.3. Written evidence**

The Customer may request Worldsmart Retail to produce written evidence of such insurances at any time (including certificates of currency of insurance from the insurer).

### **11. DELIVERABLES - GENERAL**



### 11.1. Anti-virus software

- a) It is the Customer's responsibility to protect their network servers and technology related assets, which may include Worldsmart Retail supplied Equipment, Worldsmart Retail developed Software or Smart Rewards against unauthorized access or intrusion including, but not limited to, malicious or criminal acts, worms, trojans or viruses, or network attacks, and to correct defects and/or problems that affect the functioning of the network and operating system software, after their own analysis of the risks, consequences and expenses involved.
- b) Customers may elect to reduce these risks, consequences, and expenses by executing protective measures for network security such as installation of third-party anti-virus software programs. It is the Customer's responsibility to install and update any anti-virus software programs on their equipment. From time to time, Worldsmart Retail may supply equipment that includes trial licences of anti-virus software. This software may help the Customer make a decision as to the type of anti-virus software to be permanently deployed by the Customer.
- b) Worldsmart Retail uses certain anti-virus software programs identified as Microsoft anti-virus partners on the Microsoft web site at <http://www.microsoft.com/security/partners/anti-virus.asp> (such as McAfee, Symantec and Trend Micro), and such anti-virus software programs are installed and updated on Worldsmart Retail internal systems. Prior to release and installation on a Customer's network, Worldsmart Retail developed software is tested for viruses.
- c) Anti-virus protection can involve changes to network servers and technology related assets including operating system software programs. It is the Customer's responsibility to update the applicable operating system software program, service packages and hot fixes on their equipment.
- d) Failure to provide adequate security may result in the Customer being exposed to service disruptions and subsequent losses including but not limited to: denial of service, software program replacement and re-installation expense, loss of confidential and proprietary information, fraudulent long-distance expense, loss of data and loss of revenue. Any Loss and incurred expenses associated with failure to actively address security issues are solely the Customer's responsibility. If a Customer is not prepared to perform this work, they should retain the services of a third party to do so on their behalf.

### 11.2. Alternative deliverables

Worldsmart Retail may:

- a) substitute any equipment, software or services for the Deliverables; or
  - b) modify any Deliverable;
- provided that the substituted or modified item is substantially equivalent or superior in performance and functionality to the Deliverables that the substituted or modified item replaces.

### 11.3. Access and facilities

In connection with the provision of any Deliverable, the Customer will, at its expense:

- a) follow the service guidelines and procedures issued by Worldsmart Retail from time to time;
- b) provide Worldsmart Retail with access to all Customer premises at which Worldsmart Retail is required to perform any work and provide full and free access to all relevant information, equipment and software;
- c) ensure Worldsmart Retail Customer personnel are provided with a safe work environment and are covered by all appropriate insurances when attending any location which is under construction;
- d) provide suitable security precautions and supervision to Worldsmart Retail Customer personnel in the event that Worldsmart Retail Customer personnel are required to visit a Customer location after opening hours;
- e) make accessible to Worldsmart Retail Customer personnel who are familiar with the Customer's operations, equipment, software and applications;
- f) if Services are provided "On Site", provide suitable working space and facilities and provide suitable safe storage for service equipment, diagnostic materials, spare parts and manuals;
- g) accept and implement all Worldsmart Retail maintenance levels and corrective code for Software, as advised by Worldsmart Retail;
- h) make available for use by Worldsmart Retail the latest issues of software used by the Customer;
- i) assist in the diagnosis and identification of faults, and consent to and arrange for the temporary disconnection and isolation of any equipment or software which is not supplied or maintained by Worldsmart Retail;

- j) at Worldsmart Retail's request, keep a record of use of Equipment and Software in the manner prescribed by Worldsmart Retail and make it available when required by Worldsmart Retail;
- k) at its own expense, provide telecommunications and other facilities required by Worldsmart Retail for diagnostic and testing purposes and bear the costs of the use of these facilities by Worldsmart Retail;
- l) ensure that adequate back up plans, restart procedures, checks for accuracy and procedures for security of data are in place;
- m) supervise, manage and control the proper use of Equipment and Software (including any routine Customer maintenance and Customer enhancements or modifications authorised by Worldsmart Retail);
- n) if necessary for the delivery and/or installation of any Equipment:
  - i. carry out any structural work and provide any appliances required to enable Worldsmart Retail to deliver the Equipment;
  - ii. prepare the site and environment, including, but not limited to, the carrying out of all electrical and communications wiring, structural work and the obtaining of any consents necessary for the installation of the Equipment and its connection to telecommunications lines; and
- o) comply with any conditions attached by a third-party telecommunications carrier to the use of any data transmission equipment or the provision of data transmission services.

### 11.4. Service hours

Worldsmart Retail will perform Services during the Normal Business Hours as published by Worldsmart Retail and made known to the Customer in writing from time to time. Basic service hours vary dependent upon the Deliverable. Services may be provided outside of Worldsmart Retail's basic service hours if agreed in writing between the parties and the Customer will pay an additional charge at the prevailing Worldsmart Retail rates for such services.

### 11.5. Exclusions

Unless otherwise agreed in writing, Worldsmart Retail may make an additional charge at the applicable Worldsmart Retail rates and terms then in effect for work resulting from any of the following:

- a) improper installation of Equipment or Software which was not installed by or on behalf of Worldsmart Retail;
- b) modifications, alterations or attachments to or work carried out on Equipment or Software not effected or authorised by Worldsmart Retail;
- c) use of Equipment or Software in combination with equipment, software, accessories or services not supplied or authorised by Worldsmart Retail;
- d) failure to observe the instructions or specifications of Worldsmart Retail or the relevant manufacturer or licensor regarding use, operating or environmental conditions for the Equipment or Software;
- e) misuse, abuse, accidental damage or negligent use or operation of Equipment or Software;
- f) the Customer's failure to meet its obligations under these Terms and Conditions or any Agreement;
- g) non-installation through no fault of Worldsmart Retail of applicable Software or engineering changes provided by or on behalf of Worldsmart.

### 11.6. Diagnostic materials

Worldsmart Retail may provide to the Customer diagnostic materials which include (but are not limited to) diagnostic and test routines, software, various taxation and pricing reports, manuals, documentation and data. These diagnostic materials will be held at the Customer's premises on behalf of Worldsmart Retail as an aid to the provision of Services by Worldsmart Retail. The Customer will care for and use the diagnostic materials solely for the purpose of these Terms and Conditions and in the manner directed by Worldsmart Retail from time to time; Worldsmart Retail grants no ownership or licence of them to the Customer and they remain the exclusive property of Worldsmart Retail and Worldsmart Retail will have no obligation to provide any services in relation to diagnostic materials under any circumstances. The Customer will keep confidential the diagnostic materials and the results obtained by their use and will not disclose them to any third party. The Customer will permit Worldsmart Retail at all reasonable times to audit the use of diagnostic materials and to remove them from the Customer's premises whenever Worldsmart Retail requires.

### 11.7. Resale and exports

If the Customer wishes to resell or export any Equipment, Software or materials, the Customer will obtain all consents and licences as may be required from time to time under local laws and regulations of any other country, including but not limited to the Export Administration Regulations of the United States of America, which may affect or regulate such export. The Customer must also obtain Worldsmart Retail's prior consent before exporting.

## 12. CONTENT OWNERSHIP

- a) Worldsmart Retail acknowledges and agrees that all rights, title and interests in and to the Content will at all times remain owned by the Customer or its Members.
- b) The Customer represents and warrants that it has and will only upload Content where permitted and duly licensed and/or authorised by its Members or any other interested third party.
- c) The Customer grants to Worldsmart Retail a worldwide, non-exclusive, non-transferable perpetual licence to (i) use, adapt, modify, reproduce, reformat, transform and process the Content for the Permitted Purpose and (ii) to use any Intellectual Property Rights in the Content, to the extent necessary to undertake such activities.
- d) The Customer is responsible for ensuring the accuracy and completeness of Content uploaded to the Software and/or Smart Rewards (as applicable) by it, its Users or its Members.
- e) The Customer acknowledges that Content may be stored by a third-party hosting service provider. Worldsmart Retail will only appoint third party hosting service providers (or undertake hosting of Content itself) if reasonable industry standard measures are in place with respect to the security and integrity of Content.
- f) The Customer may extract Content from a relevant system operated by Worldsmart Retail or on Worldsmart Retail's behalf in order to comply with the Customer's obligations under any Law (if any). The Customer must ensure that the timing, frequency and all other aspects of the extraction of Content do not disrupt Worldsmart Retail's operations or the operations of any third-party hosting service provider. The Customer must promptly suspend and modify any Content extraction process if Worldsmart Retail notifies the Customer that the process is disrupting Worldsmart Retail's operations or the operations of any third-party hosting services provider. If you require our assistance with respect to the extraction of any Content, then this will be treated and quoted as a Professional Service.
- g) Nothing in these Terms and Conditions will inhibit the Customer's right to continue to use and deal with any Content uploaded to the Software or Smart Rewards by the Customer or its Members for the purpose of the Customer's usual business activities.
- h) The Customer will permit Worldsmart Retail at all reasonable times to audit the Content and the Customer's use of the Content.
- i) All De-Identified Content Outputs will be owned by Worldsmart Retail.

## 13. LIMITATION OF LIABILITY

- a) Except as expressly provided in these Terms and Conditions or any Agreement, and to the full extent permitted by law, all express or implied warranties, representations or terms and conditions regarding Deliverables and their use (including without limitation their merchantability or fitness for any particular purpose), are expressly excluded.
- b) These Terms and Conditions or any Agreement that exclude or limit Worldsmart Retail's liability will apply to the full extent permitted by law. Provisions of the *Competition and Consumer Act 2010 (Cth)* (as amended and replaced from time to time) and statutes from time to time in force in Australia may imply warranties or conditions or impose obligations upon Worldsmart Retail which cannot be excluded or modified. These Terms and Conditions and any Agreement must be read and interpreted subject to any such statutory provisions. If any such statutory provisions apply, then to the extent permitted by law, Worldsmart Retail's liability for breach of those statutory provisions will be limited at its option to:
  - i. if the breach relates to goods:
    - a. the replacement of the goods or the supply of equivalent goods;
    - b. the repair of the goods;
    - c. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - d. the payment of the cost of having the goods repaired; and
  - ii. if the breach relates to services:
    - a. the supplying of the services again; or
    - b. the payment of the cost of having the services supplied again.
- c) Worldsmart Retail's aggregate liability to the Customer for:
  - i. all claims in respect of injury to or death of person(s) and damage to or loss of any physical property arising under or in connection with all Agreements and their subject matter (whether for negligence or otherwise) will to the full extent permitted by law

not exceed five million dollars (\$5,000,000); and

- ii. all claims other than those referred to in clause 13c) i. above arising under or in connection with each Agreement and its subject matter (whether for negligence or otherwise) will to the full extent permitted by law not exceed three (3) times the value of that Agreement (excluding periodic charges payable after the expiry of any minimum period).
- d) Notwithstanding anything to the contrary contained in these Terms and Conditions or any Agreement, Worldsmart Retail will not be liable for, and the Customer will assume full responsibility for:
    - i. any use or interpretation by the Customer or by any other person (including any employee of the Customer) of any information:
      - a. received from Worldsmart Retail under any Agreement; or
      - b. produced by Deliverables supplied under any Agreement; and
    - ii. any indirect or consequential Loss, loss of profits, loss of opportunity or loss or corruption of data incurred by you under or in connection with this Agreement (whether arising under contract, in tort (including negligence) or otherwise), irrespective of whether you previously notified us of the possibility of such Loss
  - e) The limitations on liability stated in this clause 13 apply to any claim (whether contractual, tortious, statutory or otherwise) which arises under or in connection with these Terms and Conditions or any Agreement.

## 14. INDEMNITY

The Customer indemnifies Worldsmart Retail against all Claims and Losses suffered or incurred by Worldsmart Retail that are caused by or arise from:

- a) any breach of this Agreement by the Customer, its Personnel or its Users; or
- b) any negligent or unlawful act by the Customer, its Personnel or its Users.

## 15. INTELLECTUAL PROPERTY RIGHTS

- a) The Customer acknowledges that it will not obtain any Intellectual Property Rights to or as a result of Deliverables unless otherwise expressly provided in an Agreement.
- b) The Customer will not at any time take any action inconsistent with the Intellectual Property Rights of Worldsmart Retail or the relevant licensor of any Deliverable. The Customer will not at any time before or after its installation change, remove or obscure any labels, legends, plates, insignia, lettering or other markings which are on any item of Equipment or Software.
- c) Subject to clause 15g) below, Worldsmart Retail will, at its expense, defend any action brought against the Customer which claims that the use of any Deliverable infringes the Intellectual Property Rights of a third party and will pay all costs, damages and legal fees finally awarded against the Customer in any such action and are attributable to such claim provided that the Customer:
  - i. promptly notifies Worldsmart Retail of the action or of any allegation of infringement;
  - ii. gives Worldsmart Retail the sole control of the defence of the action and all negotiations for its settlement or compromise;
  - iii. has not admitted and does not admit liability for the alleged infringement;
  - iv. uses all reasonable efforts to mitigate the Losses associated with the claim;
  - v. provides Worldsmart Retail with such assistance in the defence and negotiations for settlement or compromise of the claim as Worldsmart Retail may reasonably require; and
  - vi. does not incur any cost or expense concerning the action on behalf of or in the name of Worldsmart Retail without Worldsmart Retail's prior consent.
- d) If any action referred to above is brought or threatened, Worldsmart Retail may at its option:
  - i. procure for the Customer, at Worldsmart Retail's expense, the right to continue using the allegedly infringing Deliverable; or
  - ii. modify or replace it so as to avoid the infringement.
- e) If, in the case of Equipment or Software, neither of the foregoing alternatives in clause 15d) is reasonably available, the Customer agrees that upon thirty (30) days' notice from Worldsmart Retail it will return the alleged infringing Deliverable, and Worldsmart Retail will credit the Customer for the depreciate value of the relevant Equipment or Software calculated on a five (5) year, straight lined basis.

- f) Where a Deliverable is not supplied under the “Worldsmart Retail” brand names, clauses 15c) and d) will not apply, but where the owner or the licensor to Worldsmart Retail of the Deliverable has warranted to Worldsmart Retail that such Deliverable does not infringe any Intellectual property Rights in Australia and/or has agreed to indemnify Worldsmart Retail against any such infringement, Worldsmart Retail will use reasonable efforts to pass on the benefit of that warranty and/or indemnity to the Customer provided that the Customer notifies Worldsmart Retail as soon as it becomes aware of any alleged infringement and complies with any conditions applicable to such warranty and/or indemnity.
- g) Except as provided in this clause 15, Worldsmart Retail will have no liability to the Customer for any action brought against the Customer, or any allegation of infringement of any Intellectual Property Rights of any third party arising from the Customer’s use of any Deliverable. In particular, but without limitation, Worldsmart Retail will have no liability to the Customer for an alleged infringement which is based on the use of any Deliverable, other than as licensed by Worldsmart Retail, or in combination with equipment, software or services not supplied or approved by Worldsmart Retail.
- h) Further, any liability of Worldsmart Retail under this clause 15 does not apply to the extent the Claim:
- arises out of any modification of any material provided by Worldsmart Retail;
  - relates to services or materials provided by a third party in conjunction with the Software Services; or
  - is caused, or contributed to, by the Customer and/or its Personnel.
- 16. CONFIDENTIAL INFORMATION**
- a) All information identified as confidential (whether verbally or in writing) or which by its nature ought reasonably to be regarded as confidential, which is disclosed by a party under any Agreement, is supplied in confidence and will be treated by the receiving party as confidential information at all times.
- b) Neither party will, without the prior consent of the other party, use any confidential information of the other party other than for the purposes of any applicable Agreement, or divulge it to any person other than those responsible employees to whom it is necessary to supply the confidential information for such purposes.
- c) Each party will ensure that any person to whom it discloses confidential information observes the requirements of this clause 16.
- d) Neither party will be obliged to keep confidential any information which:
- is or becomes public knowledge other than by breach of this clause 16;
  - is already lawfully in its possession before receiving it from the other party;
  - it independently receives from a third party with full rights to disclose;
  - it is required by law to disclose.
- e) The parties agree that Worldsmart Retail is not required to treat De-Identified Data or Content Outputs derived from such De-Identified Data as confidential.
- 17. ESCROW**
- a) The parties shall, if required by the Customer and at the Customer’s expense, cause a current copy of the source code for the Software (**Source Code**) to be held in escrow at all times with an escrow agent approved by both parties acting reasonably, but sourced by the Customer (**Escrow Agent**) on terms to be agreed with the Escrow Agent.
- b) Worldsmart Retail shall, on deposit of the Source Code in escrow, authorise the Escrow Agent in writing to release the Source Code to the Customer if Worldsmart Retail has failed to meet any maintenance obligations or remedy any defects in the Software as required by the terms of this Agreement (together, **Required Maintenance**) and any of the following events happen:
- Worldsmart Retail files a notice to petition for its winding up except for the purposes of reconstruction;
  - Worldsmart Retail fails to secure dismissal of a winding up notice or petition filed against it within one-hundred-and-twenty (120) days of the filing of that notice or petition;
  - Worldsmart Retail makes an assignment for the benefit of creditors or any composition with creditors;
  - a receiver or receiver and manager is appointed in relation to Worldsmart Retail or a significant proportion of its assets;
  - Worldsmart Retail ceases to carry on the business of software design, supply and maintenance in a normal manner.
- c) The Escrow Agent shall not release the Source Code to the Customer unless such written notice is received. Such written notice will not be unreasonably withheld.
- d) If the Source Code is released to the Customer:
- the Customer will have a limited licence to use the Source Code for the sole purpose of undertaking the Required Maintenance;
  - the Customer must keep the Source Code confidential and secure, and must not release the Source Code or any part of it to any third party; and
  - the Customer must immediately return the Source Code to the Escrow Agent in full, and must not retain any part of the Source Code, immediately following its completion of the Required Maintenance.
- 18. PERSONAL PROPERTY SECURITIES ACT**
- a) The parties acknowledge and agree that to the extent this Agreement is a PPS Lease or that Worldsmart Retail has any other type of security interest in the Equipment, Software or Smart Rewards:
- this Agreement is a security agreement for the purposes of the PPSA; and
  - Worldsmart Retail has a purchase money security interest (**PMSI**) in the Equipment, Software and/or Smart Rewards (as applicable) and its proceeds.
- b) The Customer must do all things necessary to allow Worldsmart Retail to register and enforce such PMSI or any other security interest it may have.
- c) The Customer waives any right under section 157 of the PPSA to receive notice of a verification statement in relation to a registration event concerning a registration under the PPSA in respect of the Equipment, Software and/or Smart Rewards (as applicable).
- d) The parties agree that neither party will disclose to any other party information of the kind described under section 275(1) of the PPSA without the consent of the other.
- e) The Customer must not disclose or authorise disclosure of information requested under section 275(1) of the PPSA without the consent of Worldsmart Retail.
- f) To the extent permitted by law, unless Worldsmart Retail otherwise agrees, sections 95, 121(4), 130, 132(3)(d), 132(4) and 143 of the PPSA will not apply to enforcement of Worldsmart Retail’s security interest.
- g) If there is any inconsistency between Worldsmart Retail’s rights under this clause and the Customer’s rights under Chapter 4 of the PPSA, this clause prevails.
- h) The Customer agrees to pay or reimburse the reasonable costs of Worldsmart Retail in connection with anything required to be done under this clause.
- i) Terms used in this clause but not defined have the same meaning as in the PPSA.
- 19. DISPUTE RESOLUTION**
- 19.1. Notice of Dispute**
- a) Each party must follow the procedures in this clause 19 before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief).
- b) A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute.
- c) If the parties cannot resolve the dispute within 10 Business Days after notice has been given under clause 19.1.b), the dispute must be referred to the chief executive officers of each party or their respective nominees (in this clause 19, the **Chief Executive Officers**) for resolution.
- 19.2. Mediation**
- a) If the Chief Executive Officers cannot resolve the dispute within ten (10) Business Days after referral under clause 19.1.c) above, either party may (by giving written notice to the other party) require the dispute be referred for mediation.

- b) If the parties do not agree on a mediator or location within five (5) Business Days of a party requesting mediation under clause 19.2.a) above, the mediator and location are to be nominated by the then current Chair of the Resolution Institute, Australia or his/her designated representative (**Mediator**) (or if no such person is available or willing to nominate a mediator or a place, by the then current President of the Law Society of South Australia).

### 19.3. Costs of Dispute

- a) The costs of the Mediator are to be borne equally by the parties.
- b) Subject to clause 19.3.a), each party must pay its own internal and legal costs in relation to complying with this clause 19.
- c) Nothing in this clause 19 prevents a party from commencing and prosecuting any application for urgent injunctive or other interlocutory relief.
- d) Notwithstanding the existence of a dispute, each party must continue to perform its obligations under these Terms and Conditions.

### 20. TERMINATION

- a) A party may, without prejudice to any of its other rights or remedies under these Terms and Conditions or at law or in equity, either suspend or terminate its obligations under an Agreement:
- i. immediately, by giving notice, if the other party is subject to an Insolvency Event, except to the extent that a stay on the exercise of such a right applies under sections 415D - 415G, 434J - 434M or 451E - 451H of the Corporations Act; or
  - ii. if the other party is in material breach of that Agreement (including without limitation any breach of a payment obligation) and fails to remedy the breach within thirty (30) days of being given a notice requiring it to do so.
- b) If the suspension or termination under clause 20a) is as a result of the Customer being subject to an Insolvency Event under clause 20a) i., or in material breach under clause 20a) ii., then on and from the effective date of suspension or termination of an Agreement pursuant to clause 20a), the Customer will:
- i. cease to use any Deliverable the subject of that Agreement;
  - ii. deliver up to Worldsmart Retail any Worldsmart Retail property (including Equipment to which the Customer has not obtained title) the subject of that Agreement; and
  - iii. pay any charges already due or which become due to Worldsmart Retail under that Agreement, including any Early Termination Charges under clause 6.15a) ii.
- For the avoidance of doubt this clause 20b) will not apply if Worldsmart Retail is subject to an Insolvency Event or is in material breach under clause 20a) above.
- c) In the case of any other termination or expiration of this Agreement, or parts thereof, in circumstances where clause 20b) does not apply:
- i. for a termination for convenience of the provision of Software Services, the Customer must pay to Worldsmart Retail all amounts calculated in accordance with clause 6.15a); or
  - ii. for any other termination not covered by (i) above, the Customer must pay Worldsmart Retail (i) all outstanding invoices by the due date, and (ii) all other amounts outstanding as at the date of termination; and
- in all cases:
- iii. each party must deliver to the other party all Confidential Information of that party in its possession or control (or if requested by the other party, destroy it); and
  - iv. all rights that a party has accrued before termination continue.
- d) Termination of these Terms and Conditions or any Agreement will be without prejudice to any rights which have accrued to either party prior to such termination.
- e) The provisions of clauses 10.2, 11.7, 13, 14, 15a), 15b), 15g), 16, 18, 20 and 21 and any provision which expressly or by implication applies upon or following termination will survive termination of these Terms and Conditions or any Agreement for any reason. Clauses 15c) to e) will survive termination of these Terms and Conditions or any Agreement unless such termination is effected by Worldsmart Retail for the Customer's breach. Any Software Licence which remains effective after the termination of any Agreement or these Terms and Conditions shall remain subject to the terms of such Agreements.

### 21. EMPLOYEES

Worldsmart Retail and the Customer agree that for the time during which

any Services are provided and for a period of six (6) months thereafter, each of them will refrain from canvassing any employee of the other who is involved in the provision or receipt of such Services for the purpose of offering employment or other engagement to that employee. In the event that Worldsmart Retail is in insolvency administration, and the administrator fails to provide support within a reasonable period following a request to do so, then the Customer may approach one or more of the employees of Worldsmart Retail to enable continuation of Support.

### 22. PRIVACY

- a) The Customer acknowledges that Worldsmart Retail may collect Personal Information about the Customer, its Users and its clients. Worldsmart Retail will take reasonable steps to comply with the Privacy Law when collecting, using or disclosing such Personal Information.
- b) To the extent the Customer obtains any Personal Information from Worldsmart Retail, the Customer must process such information in accordance with the Privacy Law (whether or not the Customer is bound by it).
- c) The Customer warrants and represents to Worldsmart Retail that it has complied (and will continue to comply) with all Privacy Laws (whether or not the Customer is bound by them), including by making such disclosures and procuring such consents as are required under Privacy Laws, when collecting and disclosing Personal Information to Worldsmart Retail in order to ensure that Worldsmart Retail is able to perform its obligations under this Agreement and process Personal Information in accordance with Worldsmart Retail's privacy policy (as published on its website from time to time).
- d) The Customer must:
- i. not, and warrants and represents to Worldsmart Retail that it will not, process or otherwise do or omit to do anything in relation to Personal Information that would cause Worldsmart Retail to contravene any Privacy Law;
  - ii. cooperate with Worldsmart Retail to resolve any complaint or inquiry made under any Privacy Law, or in relation to any request for access to Personal Information;
  - iii. notify Worldsmart Retail immediately if it becomes aware of any breach or potential breach of its obligations under this clause, provide any details in relation to the failure that Worldsmart Retail requests; and without limiting any of Worldsmart Retail's rights under this Agreement, immediately comply with any reasonable direction from Worldsmart Retail with respect to remedying that breach.

### 23. GENERAL

#### 23.1. Assignment

Neither party may assign these Terms and Conditions or any Agreement in whole or in part, including by Change of Control in which case clause 6.5 will apply, without the prior consent of the other party (which may not be unreasonably withheld or delayed), provided however that Worldsmart Retail may assign these Terms and Conditions and any Agreement in whole or in part to any of its related corporations (as defined in the Corporations Law) and the Customer hereby consents to such an assignment. If a party is unable to consent to any such assignment, then this Agreement must either continue on its current terms or the party seeking to assign can elect to terminate.

#### 23.2. Notices

A notice, authorisation or consent under these Terms and Conditions or any Agreement will be in writing and given to a party by delivery, prepaid post or emailed to its address stated in an Agreement or any other address notified to the other party as the address for service and will be deemed to have been duly given:

- a) if delivered, on the date of delivery;
- b) if sent by prepaid post, four (4) days after posting; and
- c) if sent by email, on the day of confirmation of sending.

#### 23.3. Entire Agreement

Each Agreement constitutes the entire agreement and understanding between the parties concerning Deliverables and/or Services (as applicable) supplied pursuant to it and supersedes all prior or contemporaneous agreements, proposals, discussions and communications between or involving the parties and related to the Deliverables and/or Services whether oral or written. These Terms and Conditions and any Agreement may be amended only by writing signed by an authorised signatory of each party.

**23.4. Waiver**

- a) No right under these Terms and Conditions or any Agreement will be waived except by notice signed by the waiving party.
- b) Subject to clause 23.4a), any failure by a party to enforce any of the provisions of these Terms and Conditions or any Agreement, or any forbearance, delay or indulgence granted by one party to the other, will not be interpreted as a waiver of that party's rights under these Terms and Conditions or any Agreement, and will not prejudice that party's rights concerning any subsequent breach of the Agreement by the other party.

**23.5. Force Majeure**

- a) Neither party will be liable for any delay or failure to perform its obligations under these Terms and Conditions or any Agreement (except obligations relating to payment), resulting from any cause i) beyond its reasonable control, and ii) for which the adverse effects of which could not have been prevented or mitigated by that party by reasonable diligence or reasonable precautionary measures, including, but not limited to: acts of God; inclement weather; fire, explosion or flood; strikes; work stoppages; slowdowns or other industrial disputes; riots or civil disturbances; acts of government; inability to obtain any necessary licence or consent; and delays caused by suppliers or material shortages.
- b) Worldsmart Retail and the Customer will, if practicable, give to each other immediate notice of the occurrence of any such event and will as soon as the event ceases to affect the performance of obligations under the relevant Agreement resume compliance with their obligations.
- c) If the event continues for a period of 60 Business Days, either party may terminate this Agreement immediately by giving the other party written notice.

**23.6. Jurisdiction**

These Terms and Conditions and all Agreements will be governed by and interpreted under the laws of Australia and the parties submit to the jurisdiction of the courts in Australia.

**23.7. Headings**

The headings in these Terms and Conditions (including words in bold at the commencement of clauses or sub-clauses) are inserted for convenience only and will not affect the construction or interpretation of those provisions.

**23.8. Severability**

Any part, term or provision of these Terms and Conditions or any Agreement which is determined to be void, illegal or unenforceable will be severed from the relevant Agreement(s) and the remaining parts, terms and provisions will remain in full force and effect.

**23.9. Cancellation**

No Order that has been accepted by Worldsmart Retail may be cancelled by the Customer except where agreed to in writing by Worldsmart Retail. The date of cancellation shall be the date that Worldsmart Retail received written notification of the cancellation. A cancellation fee will be charged and will be based on the expenditures incurred as at the time notice of cancellation is received from the Customer. Cancellation fees are payable no later than fourteen (14) days from invoice date.

**23.10. Return of Goods**

Any Orders to be cancelled should be advised in writing within seven (7) days of ordering. Non-stock items specially ordered will not be able to be returned. Other goods will not be accepted for return if they are not received within seven (7) days of the date of invoice. Authority to return the goods must be requested before returning goods and any goods not received in as new condition in original, unmarked packaging may not be accepted. There will be a twenty percent (20%) restocking fee on all non-defective stock returned within seven (7) days of purchase.

**23.11. Subcontract**

Worldsmart Retail may subcontract any part or all of the Services. Where Worldsmart Retail chooses to do so, it remains responsible to the Customer for the performance of the Services by its contractors as if those Services were being performed by it.

## SCHEDULE 1 - SUPPORT

### 1. Support Centre

Support is provided by telephone by our Australian national support Centre (**Support Centre**). The Support Centre can be contacted:

By Phone: 1300 653 223.

By email: support@worldsmart.com.au

The Support Centre's business hours are Monday to Friday between 7am and 7pm, excluding National Public Holidays (in Australia).

The Support services do not include:

- Initial installation on site of the Equipment and Software;
- Training on the use of the Software application or Hardware;
- Consulting on business use of the Software application;
- Rectification of defects or errors resulting from any modification to the supported products made by any person other than Worldsmart Retail.
- Reconfiguration of any interfaced Software due to the Customer changing third party providers;
- Viruses or virus-related issues; or
- Rectification of a fault in any Equipment (excluding Equipment under Manufacturer's Warranty).

### 2. Levels of Support

- Level 1 Support:** Defined as basic first line calls for user operational queries and software process related queries.
- Level 2 Support:** Diagnosis and rectification of faults pertaining to Software. Faults and configuration changes that do not require code changes or have significant systemic impacts. These include but are not limited to: System configurations, database management, version management, general troubleshooting and rectification.
- Level 3 Support:** Faults requiring changes, alterations and material corrections to the source code, including recompilation and patches. Worldsmart Retail will:
  - use all reasonable endeavors to investigate any errors in the Software and correct or circumvent any Software error or malfunction;
  - provide, at no additional cost, such corrective updates and code for the Software as are generally made available by Worldsmart Retail to its customers, in accordance with Worldsmart Retail's standard procedures in force from time to time; and
  - provide advice and guidance relating to installation of the Software and the identification and reporting of errors therein.

### 3. Help Desk process

Many of the Worldsmart Retail Software packages have the ability to electronically place support calls. Where a problem has occurred, the Software may automatically place the call without the Customer's intervention or the Customer can place a call at any time. Calls can be placed 24 hours a day, 7 days a week.

Once a call is logged with the Support Centre, an email is sent directly to the Customer, confirming receipt and advising of the call incident number.

The call is then reviewed by the Support Centre Supervisor who will allocate a level of priority and assign it a Support Team Member best suited to resolve the incident in the least time.

Once the Support Team Member has identified a resolution to the problem or requires more details, the Customer will be contacted. The Support Team Member will work with the Customer to resolve the problem.

Support Calls will generally be categorized as follows:

- Operator error:** these issues are usually dealt with over the phone or by the provision of instruction in a faxed/email fact sheet.
- Software error:** these issues are generally fixed over the telephone or via mailbox upgrades/patches. In addition, extensive use of PC Anywhere as a remote support tool allows problems to be resolved without intervention by the Customer.
- Hardware failure:** Worldsmart Retail will determine the most appropriate process to rectify the problem, depending on whether the hardware is under Manufacturer Warranty or the Customer has a current Hardware Maintenance Agreement with Worldsmart Retail.

The priority of the call will usually depend on its impact on the operation of the Customer's business. This ensures that the most urgent problems are addressed quickly and effectively.

Hardware related calls, where appropriate, are logged with the appropriate 3rd party service provider. The Support Centre monitors the progress of the call and provides status updates to the Customer. Additional charges may be incurred for Equipment faults unless the fault is covered by the manufacturer's hardware warranty.

### Escalation process

If a Support call is not resolved in a pre-defined timeframe, the call is escalated to the Support Centre Manager who re-assigns calls to ensure that each call is given due attention.

Feedback to the Customer is to occur at each stage of the escalation process. At any time, the Customer can call the Support Centre to seek a status update of the call.

### 4. Response times

PRIORITY	CLASSIFICATION	TARGET RESPONSE
Priority 1	Unable to trade or severely restricted when compared with normal operations	4 hours
Priority 2	Customer is trading albeit with some restrictions	8 hours
Priority 3	Customer is trading and support relates to matter not crucial to overall operation	Next business day

### 5. After hours Support

Outside of the hours described in Item 1, the Support Centre can be contacted by phone on 1300 653 223.

Prior to Support being provided to a Customer, Worldsmart Retail will advise the Customer of the appropriate after-hours charge (if any).

<b>CLASSIFICATION OF HOURS (Sydney time)</b>	<b>CUSTOMERS WITH A SUPPORT CONTRACT</b>	<b>CUSTOMERS WITHOUT A SUPPORT CONTRACT</b>
Business Hours Agreement: MON-FRI 7am to 7pm	Covered under the support agreement. No additional charge.	\$350.00 plus GST per support call.
After Business Hours: MON-FRI 7pm to 11pm SAT-SUN 7am to 11pm	\$250.00 plus GST per support call.	\$500.00 plus GST per support call.
National Public Holidays (in Australia)	\$250.00 plus GST per support call.	\$500.00 plus GST per support call.
Extended Business Hours Agreement: MON-SUN 7am, to 11pm	Covered under the extended business hours support agreement. No additional charge.	Not available for Customers without a support contract.