

MERCHANT PRICING FOR UNIONPAY CARD TRANSACTIONS

This Undertaking is made by UnionPay International Co. Ltd (ARBN 600 782 125) of Floor 2-7, No.6 Dongfang Road, Pudong New District, Shanghai, People's Republic of China (**UnionPay**) in favour of the Reserve Bank of Australia (**Reserve Bank**) of 65 Martin Place, Sydney NSW 2000 and dated 29 May 2017.

1. OBJECTIVE

The objective of this Undertaking is to promote:

- *efficiency; and*
- *competition*

in the Australian payments system by providing that UnionPay will not enforce scheme rules or terms and conditions that restrict the ability of merchants to make a charge for accepting payment from a UnionPay card holder that reflects the cost to the merchant of accepting a UnionPay card.

2. APPLICATION

2.1 This Undertaking relates to:

- (a) the system in Australia under which UnionPay Credit Cards are used to make payments (the **UnionPay Credit Card System**);
- (b) the system in Australia under which UnionPay Debit Cards are used to make payments (the **UnionPay Debit Card System**); and
- (c) the system in Australia under which UnionPay Prepaid Cards are used to make payments (the **UnionPay Prepaid Card System**),

each of which is referred to in this Undertaking as a **System**.

2.2 In this Undertaking:

Act means the *Payment Systems (Regulation) Act 1998* (Cth);

Acquired or **Acquiring** includes accepted or accepting;

Acquirer means a participant in a System in Australia that provides services, directly or indirectly, to a Merchant to allow the Merchant to accept a Card of that System;

Card means a UnionPay Credit Card, UnionPay Debit Card or UnionPay Prepaid Card;

Card Transaction means a Credit Card Transaction, Debit Card Transaction or Prepaid Card Transaction;

Credit Card Transaction means a transaction in the UnionPay Credit Card System between the holder of a UnionPay Credit Card and a Merchant involving the purchase of goods or services using a UnionPay Credit Card that is Acquired by an Acquirer and includes any transaction to reverse such a transaction or provide a credit or make a chargeback in relation to such a transaction;

Commencement Date means 31 May 2017;

Cost of Acceptance has the meaning given to it in clause 3.8 of this Undertaking;

Debit Card Transaction means a transaction in the UnionPay Debit Card System between a holder of a UnionPay Debit Card and a Merchant involving the purchase of goods or services (whether or not it also involves the obtaining of cash) using a UnionPay Debit Card that is Acquired by an Acquirer and includes any transaction to reverse such a transaction or provide a credit or make a chargeback in relation to such a transaction;

Device means any card, plate or other payment code or device bearing the name 'UnionPay' and/or any logo, service mark, trademark, trade name or other proprietary designation owned by UnionPay or any of its Related Bodies Corporate, including a code or device where no physical card or other embodiment is issued and a code or device used or to be used for only one transaction;

Merchant means, in relation to a System, a merchant in Australia that accepts a Card of that System for payment for goods or services;

Merchant Pricing Standard means Standard No 3 of 2016 *Scheme Rules Relating to Merchant Pricing for Credit, Debit and Prepaid Card Transactions*, determined by the Reserve Bank on 26 May 2016;

Merchant Service Fee means a transaction-based fee (or a time period based fee that covers a specified or maximum number of transactions) charged to a Merchant by an Acquirer for Acquiring, or by a Payment Facilitator for arranging the Acquisition of, Card Transactions from that Merchant whether collected on an ad valorem or flat-fee basis, or charged as a blended or bundled rate across more than one type of Card Transaction or on an interchange plus acquirer margin basis or any other basis;

Payment Facilitator means an entity that arranges or procures Acquiring services from an Acquirer for one or more Merchants;

Payment Service Provider means in relation to a Merchant and a System, an entity that is not a Related Body Corporate of the Merchant that provides services and/or equipment to the Merchant that directly relate to, or are directly used for or in connection with, the acceptance by that Merchant of Cards of that System for payment for goods or services;

Permitted Cost of Acceptance Elements in relation to a Merchant and a System are the fees and premiums referred to in clause 3.8(a) for that Merchant and that System;

Permitted Surcharge has the meaning given to it in clause 3.6 of this Undertaking;

Prepaid Card Transaction means a transaction in the UnionPay Prepaid Card System between the holder of a UnionPay Prepaid Card and a Merchant involving the purchase of goods or services (whether or not it also involves the obtaining of cash) using a UnionPay Prepaid Card and includes any transaction to reverse such a transaction or provide a credit or make a chargeback in relation to such a transaction;

Reference Period has the meaning given to it in clause 3.7 of this Undertaking;

Related Body Corporate has the meaning given in the *Corporations Act 2001*;

Relevant Surcharging Rule has the meaning given to it in clause 3.5 of this Undertaking;

Rules, in relation to any System, means the constitution, rules, by-laws, procedures, manuals, agreements and other documents or instruments of that System which regulate or otherwise deal with participation in the System, including those relating to the acceptance of Cards by Merchants or the Acquiring of Card Transactions;

Surcharge means, in respect of any Card Transaction, any of the following, however named or described:

- (a) an amount charged, in addition to the price of goods or services, for the relevant Merchant accepting payment through the Card Transaction; or
- (b) an amount charged for making payment through the Card Transaction. An amount will be charged for making payment through a Card Transaction if:
 - (i) that amount is charged because the purchase of the relevant goods or services is effected using the relevant Card; or
 - (ii) the goods or services could be purchased from the relevant Merchant by a different payment method without that amount being charged;

UnionPay Credit Card means a Device that can, under the Rules for the UnionPay Credit Card System, be used in Australia for purchasing goods or services on credit (irrespective of whether the Device is issued in or outside Australia);

UnionPay Debit Card means a Device that can, under the Rules for the UnionPay Debit Card System, be used in Australia to make payments for goods or services by accessing a deposit account held at an authorised deposit-taking institution or a bank of other financial institution (irrespective of whether the Device is issued in or outside Australia);

UnionPay Prepaid Card means a Device that can, under the Rules for the UnionPay Prepaid Card System, be used in Australia to make payments for goods or services using a store of value that has been prepaid or pre-funded and is accessible to make payments for goods or services only through the use of that, or a linked or related, Device (irrespective of whether the Device is issued in or outside Australia);

include or including or such as when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and

terms defined in the Act have the same meaning in this Undertaking.

2.3 This Undertaking is to be interpreted:

- (a) in accordance with its objective; and
- (b) by looking beyond form to substance.

2.4 This Undertaking shall not apply in respect of Rules that relate, or the conduct of UnionPay that relates, to charges made by Merchants for accepting Cards for payment of a taxi fare in a State or Territory of Australia. Accordingly payment of a taxi fare in any State or Territory of Australia effected using a Card is not a payment of a kind covered by this Undertaking.

3. MERCHANT SURCHARGING RULES

3.1 UnionPay undertakes that, on and from the Commencement Date, it will not directly or indirectly enforce any Relevant Surcharging Rule in any manner, including by:

- (a) penalising or taking any adverse action against a Merchant or Acquirer; or
- (b) directly or indirectly denying a Merchant access to Acquiring services,

as a result of any non-compliance with a Relevant Surcharging Rule.

3.2 UnionPay undertakes that it will, on or before 31 December 2017 (or such later date agreed to by the Reserve Bank in writing), amend the Rules for each System such that the Rules comply in substance with the terms of clauses 3, 4 and 5 of the Merchant Pricing Standard on the basis that:

- (a) each reference to a 'Scheme' is to be read as a reference to a 'System' (as defined in this Undertaking); and
 - (b) where a term used in the Merchant Pricing Standard is defined in this Undertaking, the term is to be read as having the meaning given under this Undertaking.
- 3.3 UnionPay acknowledges that once it has amended the Rules in accordance with clause 3.2 of this Undertaking, UnionPay intends to provide the Reserve Bank with a further undertaking which will contain obligations to reflect relevant provisions of the Merchant Pricing Standard (which, for the avoidance of doubt, are not limited to clauses 3, 4 and 5 of the Merchant Pricing Standard) and which will replace the obligations of UnionPay under this Undertaking.
- 3.4 UnionPay undertakes to procure that each Acquirer provides, on or as soon as practicable after the Commencement Date, written notification of the terms of clause 3 of this Undertaking to each Merchant for which the Acquirer directly or indirectly provides Acquiring services. For the avoidance of doubt, such written notification may be provided to a Merchant by email.
- 3.5 For the purposes of clause 3 of this Undertaking, a **Relevant Surcharging Rule** means any provision of the Rules of any System which has the purpose or effect of prohibiting or deterring:
- (a) a Merchant from recovering, by charging a Surcharge in respect of a Card Transaction in a System at any time, an amount that does not exceed the Permitted Surcharge for that Merchant and that System at that time; or
 - (b) a Merchant, in recovering part or all of the Cost of Acceptance of Cards of a System, from applying different Surcharges in respect of card transactions in different systems or schemes.
- 3.6 The Permitted Surcharge for a Merchant and a System at any time is an amount not exceeding the Cost of Acceptance for that Merchant and that System applicable at that time.
- 3.7 For the purposes of clause 3.6 of this Undertaking, the Cost of Acceptance of Cards of a System applicable at a time is:
- (a) subject to paragraph (b), the Cost of Acceptance of Cards of the System calculated for a 12 month period that ended not more than 13 months before that time; or
 - (b) if the Cost of Acceptance of Cards of the System for a Merchant for a 12 month period preceding that time is not reasonably ascertainable, an estimate of the average cost of acceptance of Cards of the System for a period of 12 months calculated by the Merchant in good faith using only known and/or estimated Permitted Cost of Acceptance Elements and Card Transaction volumes for Cards of the System.

Each 12 month period referred to in paragraph (a) or paragraph (b) is a **Reference Period**.

- 3.8 Subject to the other provisions of this clause 3.8 and clause 3.9, **Cost of Acceptance** for a Merchant, a System and a Reference Period at any time means, in relation to a Merchant's acceptance of a Card of the System, the average cost per Card Transaction in the System calculated for the Reference Period as follows:
- (a) by adding only the following amounts paid by the Merchant in respect of that System during that Reference Period, which are to be determined taking into account any discount, rebate or other allowance received or receivable by the Merchant to the extent any such discount, rebate or other allowance is ascertainable:
 - (i) the applicable Merchant Service Fee or Merchant Service Fees in respect of Card Transactions in the System;
 - (ii) fees paid to any entity that was the Merchant's Acquirer, Payment Facilitator or Payment Service Provider during the Reference Period for:

- (A) the rental and maintenance of payment card terminals that process Cards of that System; or
- (B) providing gateway or fraud prevention services referable to that System;
- (iii) fees incurred in processing Card Transactions in that System and paid to any entity that was the Merchant's Acquirer or Payment Facilitator during the Reference Period including international service assessments or cross-border transaction fees, switching fees and fraud-related chargeback fees (but, for the avoidance of doubt, excluding the amount of chargebacks); and
- (iv) if the Merchant acts as agent for a principal, fees or premiums paid by the Merchant to an entity that is not a Related Body Corporate of the Merchant to insure against the risk that the Merchant will be liable to a customer for the failure of its principal to deliver goods or services purchased through a Card Transaction provided that such risk arises because payment for the relevant goods or services is effected through a Card Transaction,

but in each case only if those fees or premiums are:

- (v) directly related to Card Transactions in that System. A fee or premium will not be so directly related if it is incurred in relation to or in connection with a payment, or the sale or purchase to which the payment relates, irrespective of the method used to make the payment; and
- (vi) subject to clause 3.7(b), documented or recorded in:
 - (A) a contract in effect between the Merchant and its Acquirer, Payment Facilitator or Payment Service Provider that relates to or covers the System or Card Transactions in the System (whether or not it also relates to or covers other Systems or schemes, or card transactions in other Systems or schemes); or
 - (B) a statement or invoice from the Merchant's Acquirer, Payment Facilitator or Payment Service Provider that relates to or covers the System or Card Transactions in the System; and
- (b) expressing the total of the amounts in paragraph (a) above as a percentage of the total value of Card Transactions in the System between the Merchant and holders of Cards in the System in that Reference Period, with that percentage being the average cost per Card Transaction in the System.

3.9 If a Permitted Cost of Acceptance Element is not levied or charged on a per transaction basis and is not referable only to Card Transactions undertaken in a single System (for example, a fixed monthly terminal rental cost that allows Card Transactions in the System and card transactions in one or more other Systems or schemes to be made), that Permitted Cost of Acceptance Element is to be apportioned among the relevant Systems and other payment systems (as the case may be) to which it relates for the purpose of determining Cost of Acceptance on a pro-rata basis. The apportionment is to be based on the value of the Card Transactions in the relevant System over the period to which the cost relates as a proportion of the total value of transactions undertaken in any payment system to which the cost relates over that period (in each case, the value of the Card Transactions and transactions excludes the amount of any cash obtained by the holder of a Card of a System or other Device as part of a Card Transaction or other transaction).

4. RESERVATION OF RIGHTS

- 4.1 UnionPay reserves the right to withdraw this Undertaking by giving the Reserve Bank not less than six (6) months' (or any shorter period agreed by the Reserve Bank) prior notice of its intention to do so.
- 4.2 UnionPay acknowledges that the Reserve Bank reserves its rights to designate any System under the Act at any time should it consider this best serves the purposes of the Act.

Signed by UnionPay International Co. Ltd:



Signature of Authorised Signatory



Name of Authorised Signatory