

UNDERTAKING NO. 1 OF 2019

MERCHANT PRICING FOR UNIONPAY CARD TRANSACTIONS

This Undertaking is made by UnionPay International Co. Ltd (ARBN 600 782 125) of Building B, Poly Plaza, No.6 Dongfang Road, Pudong New District, Shanghai, China (UnionPay) in favour of the Reserve Bank of Australia (Reserve Bank) of 65 Martin Place, Sydney NSW 2000 and dated 25/9/2019.

1. OBJECTIVE

The objective of this Undertaking is to promote:

- *efficiency; and*
- *competition*

in the Australian payments system by providing that UnionPay will not impose 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;

Acquirer Supplied Element means in relation to an Acquirer, a Merchant and a System, those of the Permitted Cost of Acceptance Elements for that Merchant and that System that are supplied, directly or indirectly, by that Acquirer;

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 1 October 2019;

Cost of Acceptance has the meaning given to it in clause 5;

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;

Financial Year means a period from 1 July to the following 30 June;

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, one or more types of Card Transaction 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 which 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 the System for payment for goods or services;

Permitted Cost of Acceptance Elements has the meaning given in clause 5.3;

Permitted Surcharge has the meaning given to it in clause 4.1;

Prepaid Card Transaction means a transaction in the UnionPay Prepaid Card System between a 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 4.2;

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

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 and any other arrangement relating to the System by which participants in that System are, or consider themselves to be, bound, including those relating to the acceptance of Cards by Merchants or the Acquiring of Card Transactions;

Statement Period has the meaning given to it in clause 7.2(a);

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;

System Pair means the UnionPay Debit Card System and the UnionPay Prepaid Card System;

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.

terms defined in the Merchant Pricing Standard that are not defined in this Undertaking have the same meaning in this Undertaking unless this Undertaking provides otherwise.

- 2.3 UnionPay must do all things necessary on its part to ensure compliance with this Undertaking.
- 2.4 If any part of this Undertaking is invalid, it is ineffective only to the extent of such part without invalidating the remaining parts of this Undertaking.
- 2.5 This Undertaking is to be interpreted:
 - (a) in accordance with its objective; and
 - (b) by looking beyond form to substance.

- 2.6 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 PRICING

- 3.1 UnionPay undertakes that it will not, and the Rules will not, directly or indirectly prohibit or deter:
- (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 a Surcharge in respect of Card Transactions in that System that is different from a surcharge, fee or charge that the Merchant charges in relation to a transaction in another System, a Scheme or another payment method (except that, in relation to the System Pair, the Rules of a System may require that if a Surcharge is applied in respect of Card Transactions in one System in the System Pair, any Surcharge applied in respect of Card Transactions in the other System in the System Pair must be the same).

4. PERMITTED SURCHARGE

- 4.1 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.
- 4.2 For the purpose of clause 4.1 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:
 - (i) Permitted Cost of Acceptance Elements and Card Transaction volumes for Cards of the System; or
 - (ii) Permitted Cost of Acceptance Elements and Card Transaction volumes for Cards of all Systems.

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

5. COST OF ACCEPTANCE

- 5.1 Subject to the other provisions of this clause 5, **Cost of Acceptance** for a Merchant, a System and a Reference Period at any time means, in relation to the 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 the Permitted Cost of Acceptance Elements for the System and expressing the total of those amounts as a percentage of the total value of Card Transactions in the System between the Merchant and the holders of Cards in the System in that Reference Period, with that percentage being the average cost per Card Transaction in the System; or

- (b) by adding the Permitted Cost of Acceptance Elements for all Systems and expressing the total of those amounts as a percentage of the total value of Card Transactions in all Systems between the Merchant and holders of Cards in those Systems in that Reference Period, with that percentage being the average cost per Card Transaction in each System.
- 5.2 In relation to a Merchant's acceptance of a Card of a System that is part of the System Pair, **Cost of Acceptance** for a Reference Period may be calculated as provided in clause 5.1(a), except that the average cost per Card Transaction for the Reference Period may be calculated across the System Pair using only the Permitted Cost of Acceptance Elements for both Systems in the System Pair.
- 5.3 In relation to a Merchant, a System and a Reference Period, the **Permitted Cost of Acceptance Elements** are any of 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:
- (a) the applicable Merchant Service Fee or Merchant Service Fees in respect of Card Transactions in the System;
 - (b) fees paid to any entity that was the Merchant's Acquirer, Payment Facilitator or Payment Service Provider during the Reference Period for:
 - (i) the rental and maintenance of payment card terminals that process Cards of that System; or
 - (ii) providing gateway or fraud prevention services referable to that System;
 - (c) 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
 - (d) 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:
 - (e) directly related to Card Transactions in that System (whether or not they are also directly related to Card Transactions in another 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
 - (f) subject to clause 4.2(b), documented or recorded in:
 - (i) 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 another System, Scheme or other payment system, or card transactions in another System, Scheme or other payment system); or
 - (ii) 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 (whether or not it also relates to or covers another System or Card Transactions in another System).

- 5.4 Subject to clause 5.5, 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 (or System Pair where clause 5.2 applies) (for example, a fixed monthly terminal rental cost that allows card transactions in more than one System, or card transactions in the System and in one or more Schemes, to be made), that Permitted Cost of Acceptance Element is to be apportioned among the relevant Systems, System Pair, Schemes 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 System or System Pair (as applicable) 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: (a) the holder of a Card of a System as part of a Card Transaction; and (b) the holder of a card or other device of another System, a Scheme or other payment system (as applicable) as part of the other transaction).
- 5.5 If any Cost of Acceptance is calculated in accordance with clause 5.1(b) and a Permitted Cost of Acceptance Element included in that calculation is referable to Card Transactions undertaken in more than one System, clause 5.4 does not require the apportionment of the Permitted Cost of Acceptance Element among the relevant Systems.

6. CARD IDENTIFICATION

- 6.1 UnionPay undertakes to procure that:
- (a) all UnionPay Debit Cards issued after 1 October 2019 in Australia by a participant in the UnionPay Debit Card System that are capable of being visually identified as UnionPay Debit Cards are so identified;
 - (b) by 1 May 2020, all UnionPay Debit Cards issued in Australia by a participant in the UnionPay Debit Card System that are capable of being visually identified as UnionPay Debit Cards are so identified;
 - (c) all UnionPay Prepaid Cards issued after 1 October 2019 in Australia by a participant in the UnionPay Prepaid Card System that are capable of being visually identified as UnionPay Prepaid Cards are so identified; and
 - (d) by 1 May 2020, all UnionPay Prepaid Cards issued in Australia by a participant in the UnionPay Prepaid Card System that are capable of being visually identified as UnionPay Prepaid Cards are so identified.
- 6.2 UnionPay undertakes to procure that:
- (a) all UnionPay Debit Cards issued after 1 October 2020 in Australia by a participant in the UnionPay Debit Card System are issued with a Bank Identification Number (BIN) that allows them to be electronically identified as UnionPay Debit Cards; and
 - (b) all UnionPay Prepaid Cards issued after 1 October 2020 in Australia by a participant in the UnionPay Prepaid Card System are issued with a BIN that allows them to be electronically identified as UnionPay Prepaid Cards.

- 6.3 Without limiting clause 6.2, UnionPay undertakes that, from 1 October 2019, it will, or procure that an Acquirer that Acquires Card Transactions of more than one System for a Merchant will, provide to the Merchant, or publish, lists of BINs that permit the Merchant to separately identify Card Transactions of each applicable System electronically.

7. TRANSPARENCY

- 7.1 Subject to clause 7.3, UnionPay undertakes to procure that each Acquirer provides, on or as soon as practicable after the Commencement Date, written notification of the terms 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.
- 7.2 Subject to clause 7.3, UnionPay undertakes to procure that, from no later than 1 October 2020, each Acquirer issues, or causes to be issued, monthly statements to each Merchant for which the Acquirer provides Acquiring services. Each such statement must set out:
- (a) the dates on which the period covered by the statement begins and ends (**Statement Period**). For that purpose, for all statements except the first, the date a statement period begins must be the day after the day the immediately previous statement period ends;
 - (b) for the relevant Statement Period:
 - (i) the aggregate cost of the Acquirer Supplied Elements of the Cost of Acceptance for the Merchant of either:
 - (A) Cards of all Systems over the Statement Period (a **Bundled Month Element Cost Total**); or
 - (B) Cards of each System over the Statement Period or for a System that is part of the System Pair, Cards of both Systems in the System Pair over the Statement Period (each, an **Individual Month Element Cost Total**);
 - (ii) the aggregate value of Card Transactions Acquired for the Merchant for either:
 - (A) all Systems over the Statement Period (a **Bundled Month Value Total**); or
 - (B) each System over the Statement Period or for a System that is part of the System Pair, both Systems in the System Pair (each, an **Individual Month Value Total**); and
 - (iii) either the Bundled Month Element Cost Total expressed as a percentage of the Bundled Month Value Total or for each System and System Pair (if applicable), the Individual Month Element Cost Total expressed as a percentage of the Individual Month Value Total; and
 - (c) if it is the statement for the last full Statement Period within a Financial Year:
 - (i) the aggregate cost of the Acquirer Supplied Elements of the Cost of Acceptance for the Merchant over the 12 month period ending on the last day of that Statement Period (an **Annual Period**) of either:
 - (A) Cards of all Systems (a **Bundled Annual Element Cost Total**); or
 - (B) Cards of each System or for a System that is part of the System Pair, Cards of both Systems in the System Pair (each, an **Individual Annual Element Cost Total**);
 - (ii) the aggregate value of Card Transactions Acquired for the Merchant for either:
 - (A) all Systems over the Annual Period (a **Bundled Annual Value Total**); or

- (B) each System over the Annual Period or for a System that is part of the System Pair, both Systems in the System Pair over the Annual Period (each, an **Individual Annual Value Total**); and
 - (iii) either the Bundled Annual Cost Total expressed as a percentage of the Bundled Annual Value Total or for each System and System Pair (if applicable), the Individual Annual Element Cost Total expressed as a percentage of the Individual Annual Value Total.
- 7.3 The requirements of clause 7.1 or clause 7.2 will be complied with in relation to an Acquirer if:
- (a) the Acquirer provided Acquiring services to the Merchant indirectly via a Payment Facilitator;
 - (b) prior to the time the Acquirer was required to notify or give a statement under clause 7.1 or 7.2 (as applicable), it entered into a written agreement with the Payment Facilitator which obliged the Payment Facilitator to provide the notice and statements described in clauses 7.1 and 7.2 at the times described in those clauses;
 - (c) after conducting due inquiries of the Payment Facilitator before that agreement was entered into, the Acquirer was satisfied that the Payment Facilitator had sufficient processes in place to provide those notices and statements at the times described in clauses 7.1 or 7.2 (as applicable); and
 - (d) after entering into that agreement and prior to the time the notice or statement (as the case may be) was required to be sent, the Acquirer had not had cause to suspect that the notice or statement would not be sent to the Merchant by the Payment Facilitator in accordance with clauses 7.1 or 7.2 (as applicable).

8. ANTI-AVOIDANCE

- 8.1 UnionPay undertakes that it will not, either alone or together with one or more other persons (including any participant), enter into, begin to carry out or carry out a plan or arrangement or otherwise be knowingly involved in a plan or arrangement if it would be concluded that UnionPay did so for a purpose of avoiding the application of this Undertaking, and the plan or arrangement or part of the plan or arrangement has achieved or would but for this provision have achieved or could reasonably be considered to have achieved that purpose.
- 8.2 For the purpose of this Undertaking, a provision of a plan or arrangement shall be deemed to have a particular purpose if the provision was included in the plan or arrangement by a party or parties for purposes that include that purpose and that purpose was a substantial purpose.
- 8.3 Without limiting clause 8.1, neither UnionPay nor the Rules of a System, shall directly or indirectly deny, or cause an Acquirer to deny, a Merchant access to Acquiring services or cause an Acquirer to decline to provide Acquiring services to a Merchant for the reason (whether solely or in combination with other reasons) that:
- (a) the Merchant imposes or intends to impose a Surcharge in relation to Card Transactions in that System; or
 - (b) the amount of any Surcharge charged, or proposed to be charged, by the Merchant in relation to Card Transactions in the System is a particular amount, either in absolute terms or relative to any other surcharge, fee or charge (unless that amount would exceed the Permitted Surcharge for Card Transactions in that System).


9. COMMENCEMENT AND IMPLEMENTATION

- 9.1 This Undertaking takes effect on the Commencement Date.
- 9.2 The obligations in the undertaking provided by UnionPay to the Reserve Bank dated 29 May 2017 (**2017 Undertaking**) will be replaced by this Undertaking on the Commencement Date, on which date the 2017 Undertaking will be withdrawn.
- 9.3 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.
- 9.4 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 by its authorised signatory in the presence of:



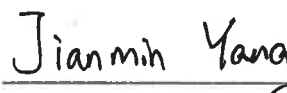
Signature of Witness



Name of Witness



Signature of Authorised Signatory



Name of Authorised Signatory