



# **AGREEMENT**

## **(New Zealand)**

**PLEASE RETURN COMPLETED AGREEMENT TO YOUR LOCAL BUSINESS DEVELOPMENT MANAGER**

## PAYSMART DIRECT DEBIT SERVICES AGREEMENT

**THIS AGREEMENT** is made on the date specified in Item 1 of Schedule 1.

**BETWEEN:** [PAYSMART NZ LIMITED of 5 The Warehouse Way, Northcote, Auckland 0627, New Zealand ('PaySmart').]

**AND:** The party named and described in Item 3 of Schedule 1 ('Client').

### BACKGROUND

- A. PaySmart is in the business of providing and managing direct debit billing services.
- B. The Client is in the business of providing various facilities and services to customers for a fee.
- C. Various customers of the Client elect to pay fees payable to the Client by direct debit instalments at such intervals as agreed with the Client ('Customers').
- D. The Client wishes to engage the services of PaySmart for the purpose of collecting the fees payable by the Customers upon the terms and conditions of this Agreement.

### OPERATIVE PROVISIONS

#### 1.0. DEFINITIONS

- (a) '**Agreement**' means this Direct Debit Services Agreement.
- (b) '**Break Costs**' means fees charged to the Client for a request to terminate the Agreement prior to the completion of the Initial Term or subsequent renewals.
- (c) '**Business**' means the business carried out by the Client.
- (d) '**Credit Card Charges**' means those fees charged by any credit card merchant in processing any credit card payment pursuant to a DDR.
- (e) '**Debit Date**' means the date upon which PaySmart collects Direct Debit payments in accordance with each DDR.
- (f) '**DDR**' means a Direct Debit Request by a Customer.
- (g) '**Direct Debit**' means such periodic instalment payments from a Customer's account with a financial institution or credit card.
- (h) '**GST**' has the meaning given to it in the GST Legislation.

- (i) **'GST Legislation'** means the *Goods and Services Tax Act 1985* and any associated Commonwealth legislation, regulations and publicly available rulings.
- (j) **'Interlink'** means the Interlink Application Programming Interface provided to the Client when using an integrated software application.
- (k) **'Initial Term'** means the term as specified in Item 5 of Schedule 1.
- (l) **'Join Online'** means the secure facility provided by PaySmart that enables Clients to load new Customers directly from the Client website.
- (m) **'Privacy Act'** means the *Privacy Act 1993*.
- (n) **'Services'** means the direct debit billing services provided by PaySmart under this Agreement.
- (o) **"Sign Online"** means the secure online facility provided by PaySmart that enables Clients to enter a DDR and capture an electronic signature when using a touch enabled device.
- (p) **'Term'** means the term of this Agreement, comprising the Initial Term or any renewed term, if applicable.
- (q) **'Web Express'** provides a secure online facility for the Client to process changes to Customer details including adding new DDR's, suspensions, variations, cancellations, and refunds.
- (r) **'Working Day'** means a day that is not a Saturday, Sunday or public holiday in the State in which the Business is located.

## 2.0. APPOINTMENT

- 2.1. The Client hereby appoints PaySmart and PaySmart hereby accepts the appointment as the Client's exclusive service provider to perform the Services during the Term in accordance with the terms of this Agreement.
- 2.2. During the Term, the Client agrees not to appoint another service provider to provide services the same as or substantially similar to, the Services provided by PaySmart.

## 3.0. TERM

- 3.1. This Agreement is for the Initial Term.
- 3.2. At the end of the Initial Term, this Agreement will automatically renew for successive periods of 12 months each unless a party has given prior written notice of its intention to terminate this Agreement at least 60 days before the end of the Initial Term or the end of the renewed period, as the case may be.

## 4.0. DIRECT DEBIT REQUESTS (EDDR)

- 4.1. The Client agrees that it is responsible for collecting a DDR form from each Customer and that it must submit the DDR to PaySmart in one of the following ways:
  - (a) by Web Express;
  - (b) by Sign Online;
  - (c) by Join Online;
  - (d) by Interlink ;or
  - (e) in any other form approved by PaySmart from time to time.

- 4.2. The Client agrees to comply with any documentation requests of PaySmart including obtaining a signed copy of a DDR from a Customer, and providing that DDR to PaySmart upon request.

## 5.0. OBLIGATIONS OF PAYSMART

- 5.1. PaySmart will carry out the following Services:
- (a) deposit all Direct Debit payments received by PaySmart pursuant to each DDR into a trust account;
  - (b) arrange for the processing of the DDR Forms with the financial institutions named in the forms;
  - (c) settle cleared funds in accordance with the settlement frequency referred to at Item 6 of Schedule 1 by direct bank transfer to the account nominated by the Client for an amount representing the total amount of payments collected by PaySmart from the Customers, less PaySmart's fees and any Credit Card Charges, as applicable.
  - (d) supply to the Client a report detailing:
    - (i) Customers whose payments have been collected;
    - (ii) Customers whose fees remain unpaid;
    - (iii) Customers who have cancelled since the last report;*(Note – all reports will be available electronically free of charge. )*
  - (e) send a request for payment to Customers who have overdue payments.
- 5.2. PaySmart will make reasonable attempts to recover overdue payments.
- 5.3. If required by the Client, PaySmart will attend to the collection of overdue payments in accordance with the terms and conditions set out in Schedule 2.
- 5.4. If the Client requires PaySmart to carry out services which do not form part of the Services ('**Additional Services**'), the fees and charges for those Additional Services will be negotiated on a case by case basis. Unless otherwise agreed in writing, the terms of this Agreement will govern the performance of any agreed Additional Services.

## 6.0. OBLIGATIONS OF THE CLIENT

- 6.1. The Client must, by 11.59pm (EST) on the Working Day prior to each Customer's Debit Date:
- (a) provide PaySmart with all DDR for new Customers;
  - (b) where a Customer is changing the account details to a bank or financial institution different from that nominated in the original DDR, provide to PaySmart a new DDR detailing the new account details;
  - (c) notify PaySmart of any cancellations, variations or amendments to each Customer's payment.
- 6.2. The client agrees to reimburse PaySmart for any payments disputed by Customers and as charged back by the Customer's financial institution by authorising PaySmart to deduct the disputed and charged back amounts from the next settlement. This obligation survives the termination of this agreement.

- 6.3. To better secure the obligations of the Client under clause 6.2
- (a) PaySmart will withhold from the final settlement to the Client a sum up to 10% of the Client's average payment (averaged over the 12-month period immediately preceding the date of termination of this Agreement) for a period of 12 months following the termination of this Agreement; and
  - (b) The Client agrees to sign a DDR authority set out in Schedule 3, in the event that no monies are held in trust or due to be settled to cover any chargebacks.
- 6.4. Notwithstanding clause 6.3, upon termination of this Agreement, PaySmart may evaluate chargeback history on the Client's account to determine an appropriate level of funds which will be held by PaySmart for a further period of not less than ninety (90) days.
- 6.5. PaySmart will refund to the Client the balance, if any, of the sum held by it under clause 6.3 at the end of the 12-month period following the termination of this Agreement.

## 7.0. FEES

- 7.1. The Client will pay PaySmart the fees as set out in Schedule 1 for each Customer in consideration of PaySmart providing the Services, comprising:
- (a) a setup fee, upon receipt of a new DDR from a customer;
  - (b) an administration fee, upon PaySmart effecting a Direct Debit for each Customer;
  - (c) Merchant fees, upon PaySmart effecting a Direct Debit via any Credit Card or Debit Card for each Customer.
  - (d) Merchant fees - upon PaySmart effecting a Direct Debit via any Credit Card or Debt Card for each Customer.
  - (e) Dishonor fee may be charged to a Customer in the event of an unsuccessful transaction. A dishonour fee may be deducted from the amounts payable to the Client if the Client has requested that the Customer not pay the dishonour fee.
  - (f) Refund fee, may be charged to the Client if PaySmart are requested to process such refunds.
  - (g) FOS Fees, If a Customer registers a complaint or dispute with the Financial Ombudsman Service (part of the Australian Securities & Investments Commission) in relation to a DDR, PaySmart may recover the costs of any fees it incurs that are charged by the Financial Ombudsman Service as part of its case management and dispute resolution process in relation to the complaint or dispute, to the extent that PaySmart is not directly responsible for the complaint or dispute arising.
  - (h) Chargeback fees, PaySmart may recover the costs of any fees or other expenses it incurs as a consequence of a bank chargeback relating to a Customer.
- 7.2. Unless otherwise stated, all fees and charges outlined in this Agreement are GST inclusive.
- 7.3. Following the Initial Term or subsequent renewals PaySmart reserves the right to alter or increase the fees upon giving the Client not less than 60 days prior notice in writing of the intended alteration or increase.
- (a) Upon PaySmart providing notice of an increase in the fees, the Client has 90 days to reasonably reject any increase and terminate this Agreement without penalty. In the absence of any objection to the fee increase, the new fee structure will take effect at the end of the 60 days' notice originally provided.

- 7.4. It is agreed that all fees payable to PaySmart may be withheld and withdrawn by PaySmart prior to allocation of funds to the Client under clause 5.1(c).
- 7.5. Should the Client request to terminate the Agreement prior to the completion of the Initial Term or subsequent renewals Break Costs apply.
- (a) Break Cost calculation is as follows - Divide by 12 the number of active Customers billed in the previous 12 month establishing 'the average' number of active Customers as at the time notification to terminate. The average number of Customers is then multiplied by the admin fee being charged, and multiplied again by the number of billing cycles yet to be fulfilled.

EXAMPLE ONLY:  $588 / 12 =$  an average of 49 active customers. Multiply 49 Customers by \$1.95 and multiply again by 21 billing cycles remaining to complete the Agreement Term. = \$2006.55 Break Cost.

$$\$2006.55 = ((588/12)*1.95)*21.$$

## 8.0. APPOINTMENT OF THIRD PARTY

- 8.1. PaySmart may appoint third party independent contractors to perform on behalf of PaySmart all or any of its obligations under this Agreement.
- 8.2. PaySmart will authorise any such third parties to act only in accordance with the terms of this Agreement and no additional fees will be required from the Client.

## 9.0. INDEMNITY

- 9.1. The Client indemnifies and shall keep indemnified PaySmart from and against all actions, claims, demands, losses, damages, cost, charges or expenses for which PaySmart shall be or become liable arising from, connected with or in any way related to:
- (a) any breach or default by the Client of this Agreement; and
- (b) any loss, claim, demand or expense suffered or incurred by PaySmart as a result of or in connection with any negligent act or omission of the Client, including any claim made by the Customers against PaySmart for payments in relation to a cancelled or revoked DDR, where PaySmart had not received notification of such cancellation or revocation from the Client 2 Working Days prior to the Debit Date.

## 10.0. LIMITATION OF PAYSMART'S LIABILITY

- 10.1. To the extent permitted by law, PaySmart's liability to the Client under this Agreement is limited (at PaySmart's election) to:
- (a) the supplying of the Services again; or
- (b) the payment of the cost of having the Services supplied again.

## 11.0. TERMINATION

- 11.1. PaySmart may terminate this Agreement at any time by giving written notice to the Client if any of the following occur:

- (a) if the Client is in breach of this Agreement and fails to remedy the breach within 14 days of receiving a written notice of the breach from PaySmart requiring the breach to be remedied;
- (b) if the Client is in breach of any provision of this Agreement which is not capable of remedy;
- (c) on the appointment of a receiver and/or manager, liquidator, administrator, other controller or trustee in bankruptcy to the Client or any of its assets;
- (d) if Westpac do not approve or at any time do not accept the client as a submerchant of PaySmart.

11.2. Any payments by PaySmart after the date of termination shall be paid to the Client less any fees and Credit Card Charges, as applicable, due and payable as at the date of termination.

## 12.0. PRIVACY AND CONFIDENTIALITY

- 12.1. The Client may, upon giving 14 days prior written notice to PaySmart, audit financial records kept by PaySmart in relation to Customers of the Client at PaySmart's offices and at the expense of the Client.
- 12.2. In order that PaySmart may comply with its obligations under the Privacy Act, the Client acknowledges that PaySmart is entitled to refuse to disclose any or all records to the Client or to any third party except reasonably necessary for audit purposes under clause 12.1.
- 12.3. The parties must keep confidential all information:
- (a) relating to each other's business, including work practices, systems, forms and computer softwares; and
  - (b) provided by the Customers to the Client and PaySmart for the purposes of this Agreement,
- (**'Confidential Information'**).
- 12.4. The Client must, if requested by PaySmart, return any and all copies of any Confidential Information howsoever embodied or recorded, including copies of any and all DDR Forms relating to the Customers.
- 12.5. Access to financial records kept by PaySmart may be provided to a federal or state agency where it is proven such agency holds the legal authority to request such information. PaySmart may or may not notify the Client that such a request has been made.
- 12.6. The obligations of confidentiality in this clause survive the expiry or termination of this Agreement.

## 13.0. SALE OF BUSINESS

- 13.1. If the Client is selling the Business to another person, company or entity the Client must:
- (a) give PaySmart 60 days prior notice in writing and specify the identity of the proposed transferee and the date of the proposed transfer;
  - (b) procure that the transferee enters into a deed with PaySmart, agreeing to be bound by this Agreement as if the transferee were a party to this Agreement.

## 14.0. GENERAL

### 14.1. Independent Contractor

- (a) PaySmart is an independent contractor. Nothing in this Agreement creates a joint venture, partnership or agency relationship between the parties.

- (b) The Services provided under this Agreement are not to be constructed as conferring upon PaySmart any responsibility for providing services or facilities which are usually provided by the Client to its customers.

#### **14.2. Entire Agreement and Variation**

- (a) This Agreement contains the parties' complete agreement with respect to the Services and supersedes any other agreements signed by the parties.
- (b) No amendment or variation of any provisions of this Agreement will be effective unless made in writing and signed by the authorised representative of each party.

#### **14.3. Notices**

Notices and other communications to be exchanged between the parties may be sent by courier, post, fax or via electronic mail, to that party's address specified in Schedule 1, or such other address notified by that party from time to time. Communications sent by:

- (a) courier are deemed received by the receiving party when proof of receipt has been signed;
- (b) sent via post are deemed received five days after the date of posting;
- (c) sent via fax or electronic mail are deemed received immediately after sending unless the sender receives advice of unsuccessful transmission.

#### **14.4. No waiver**

A right created under this Agreement may not be waived except in writing signed by the party granting the waiver.

#### **14.5. Warranties and representations**

Any warranties, representations and indemnities given under this Agreement survive termination of this Agreement.

#### **14.6. Governing Law**

This parties agree that this Agreement is governed by the laws of New Zealand



## SCHEDULE 1

ITEM 1:	Date of Agreement:	
ITEM 2:	PaySmart:	<p>NZ Office Address: 5 The Warehouse Way, Northcote, Auckland 0627, New Zealand.</p> <p>Postal Address: P.O. Box 5567, Stafford Heights 4053, Queensland, Australia.</p> <p>Phone: 09 488 0021</p> <p>Contact Person: Colin Walker, General Manager - Sales and Marketing</p>
ITEM 3:	Client:	<p>Company Name: ..... Date Established: .....</p> <p>Company Number.....</p> <p>Trading Name.....</p> <p>Partnership                  Sole Trader                  Company</p> <p>Business/Industry Type: .....</p> <p>Business URL: .....</p> <p>Business IP Address:.....</p> <p>Is the business and customers domiciled solely in Australia: .....</p> <p>Approximate split between direct debits and credit cards: .....</p> <p>Approximate number of transactions per year: .....</p>
ITEM 4:	Client Contact Details:	<p>Trading Address: ..... State: .....</p> <p>Post Code: ..... Phone: (.....)..... Mobile: .....</p> <p>Fax: (.....)..... Mailing Address: .....</p> <p>Contact Person: .....</p> <p>Email for general correspondence: .....</p> <p>Email for settlement reports: .....</p>
ITEM 5:	Initial Term:	36 months
ITEM 6:	Settlement Frequency	<p>Day: ..... Frequency: ..... Date from: ..... (if applicable)</p> <p>Rolling (paid whenever cleared funds are available)</p>
ITEM 7:	Set Up Fee (per customer)	\$11-00
ITEM 8:	Administration Fee	<p>\$1-30 (weekly) per debit per customer      \$1-95 (fortnightly) per debit per customer</p> <p>\$2-95 (monthly) per debit per customer      \$3-95 (quarterly) per debit per customer</p>
ITEM 9:	Dishonor fee	\$15 per Customer
ITEM 10:	Refund Fee	\$10 per Customer refund
ITEM 11:	FOS Fees	The current fees charged by the Financial Ombudsman Service are available on request
ITEM 12:	Chargeback fees	\$44 is payable on each chargeback
ITEM 13:	Settlement Report	Settlement Reports are available at no cost to the Client via WebExpress or email.
ITEM 14:	Credit Card & Debit Card Merchant Fees	2% Visa and Master Card.

## SCHEDULE 2

### DEBT COLLECTION TERMS AND CONDITIONS

**DEBT COLLECTION AGREEMENT: Pursuant to Section 433 of the Property and Motor Dealers Act 2000 ("PAMD")**

The Client acknowledges the following terms and conditions apply if the Client requires PaySmart to attend to the collection of overdue payments under clause 5.3 of the PaySmart Agreement.

The Client authorises PaySmart to engage the services of Australian Recoveries & Mercantile Agents Pty Ltd (ARMA).

The appointment of ARMA is a continuing appointment, however may be revoked at any time by giving 7 days' notice in writing by either party.

PaySmart may, under certain provisions give your information to the ARMA to whom PaySmart has engaged with. This information will enable ARMA to contact you, the client, with any questions about your debtors and set up your account.

- You will be given a 2 week opportunity to reply to us to remove a specific customer that is going to be sent to the debt collector - No email to remove the customer means they will be sent to ARMA the debt collector.
- Debt collection cannot be enforced against a minor (under 18 years) unless supporting evidence is received to show that the contract or terms and conditions have been signed by a guarantor.
- The debt to be pursued must exceed \$100 (inclusive of GST).
- ARMA will charge a 22% (exclusive of GST) commission rate, which will be passed on to the customer, on any monies collected.
- An administration fee of \$50.00 (inclusive of GST) will be added onto the amount owed by the customer.
- Once details of a debtor have been sent to ARMA, the Client agrees NOT to make any financial arrangement with the debtor to resolve the debt, without the approval in writing of PaySmart.
- Unless otherwise agreed, a debtor cannot be withdrawn once the debtor's details have been submitted to ARMA. Such withdrawals will be at the discretion of PaySmart and a cancellation fee, equivalent to the debt collection percentage maybe charged to the Client.
- Any queries or communication from the debtor must be referred directly to ARMA.
- Once the debtor has been sent to ARMA if the debt remains unpaid or a payment agreement has been breached by the debtor and all avenues to collect the debt have been exhausted by ARMA then under some circumstances a debtor may be listed with a credit reporting agency.
- A debtor can only be forwarded to ARMA if they have signed a DDR Service Agreement supplied or otherwise approved by PaySmart.
- PaySmart shall not be required to arrange for legal proceedings to be initiated against the debtor. Should legal proceedings be initiated by the Client or the debtor, the Client may incur additional costs and an authorised representative of the Client may need to attend such proceedings.

**Please select if you would like to Opt In for PaySmart's debt collection system\*:**

**Yes, I would like to Opt In**

**No, I would not like to Opt In**

\*If you have selected yes, you hereby agree to opt in to PaySmart's debt collection system and agree to the Terms and Conditions outlined above.

## SCHEDULE 3

### DIRECT DEBIT REQUEST AUTHORITY

Client Name: \_\_\_\_\_

Contact: \_\_\_\_\_ Phone: (        ) \_\_\_\_\_ Mobile: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

#### Payment Agreement:

I/We hereby authorise and request **PaySmart Pty Ltd ACN 117 597 010** (Debit User ID number **073053** and Credit User ID number **315562**) to arrange for funds to be debited from and credited to my/our nominated account identified below:

Bank: \_\_\_\_\_

Bank Number: \_\_\_\_\_ (2 digits) Branch Number: \_\_\_\_\_ (4 digits)

Account Number: \_\_\_\_\_ (7 digits) Suffix: \_\_\_\_\_ (3 digits)

This authority is to remain in force in accordance with clause 6.3 of the PaySmart Direct Debit Services Agreement.

#### Signatory of Nominated Account:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

## SCHEDULE 4

### Risk Management – Know Your Customer (KYC)

With the introduction of the Anti-Money Laundering Act and the tighter controls being imposed by credit card companies we now have an increased requirement to understand in more depth the individuals behind the organisations that we are dealing with.

The respective groups we deal with in the main are;

- Sole traders
- Partnerships
- Private Companies
- Public Companies
- Unit Trusts
- Associations (not for profit)

When we are entering into a Management Agreement we will now have to conduct due diligence on the organisations and their officers to ensure that we are dealing with credible, solvent and lawful operations and responsible, solvent officers.

The majority of the information required below can be garnered through discussion with the organisation and some can be gathered through an ASIC enquiry.

<b>General Business Information</b>	
Legal name of entity	
Trading name of entity	
ACN Number	
Date established	
Type of entity	
Approximate employee #'s	
Authorised signatories	
Directors/Trustees/Officers	
Other directorships held by any of the above	

Have any or are any of the above officers classed as prohibited Directors or Officers of an entity?			
If yes, please comment:			
<b>FURTHER INFORMATION</b>			
Is the business and its customers domiciled solely in Australia?			
If no, please comment:			
<b>TRANSACTION INFORMATION</b>			
Number of Transactions per week/month. (circle)		Approx. value of transactions	
Approx. Debit Debit/Credit Card split			
Do individual transaction values exceed \$200?			
<b>If yes, obtain a credit check from Veda, Dunn and Bradstreet or Baycorp and attach a copy.</b>			
<b>BUSINESS REFEREES</b>			

**Other comments:**

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This information will pend approval upon review by the National Sales Manager of PaySmart.

**EXECUTED AS AN AGREEMENT**

<b>EXECUTED</b> by an authorised representative for:	}	<u><b>Client</b> Signatory 1</u>
_____	}	<u><b>Client</b> Name</u>
(Client Name)		
	}	<u><b>Client</b> Signatory 2</u>
	}	<u><b>Client</b> Name</u>
<b>EXECUTED</b> by <b>PAYSMART PTY LTD</b>	}	<u><b>PaySmart</b> Signature</u>
<b>ACN 117 597 010</b> by its authorised officer:	}	<u><b>PaySmart</b> Name</u>