

CardGate Services Merchant Instructions

What to do

- 1) Ensure that a satisfactory business and technical solution can be delivered by your web developer/hosting service/systems integrator and CardGate.net.
- 2) Understand and agree to CardGate.net's business terms as outlined in the *CardGate.net Services - Provision of Services Agreement*.
- 3) Indicate that you wish to proceed. This means that you will need to be a Commonwealth Bank Mail Order/Telephone Order Merchant approved for Internet Orders. If you like, CardGate.net can pass on your details to the Bank.
- 4) The Bank will contact you to provide the appropriate forms.
- 5) The Bank will process the request and inform you of your status after assessment. If approved, let us know your Merchant and Terminal ID's provided by the Bank by email at cardgate@cardgate.net. These numbers are needed to enable our CardGate Payment Gateway to process transactions on the Merchant's behalf.
- 6) Sign up as a CardGate Services Merchant.
- 7) Develop and test the system.
- 8) Once ready to go live, pay the Merchant Enablement Fee. This may be conducted by credit card online at [CardGate.net Bill Payment](#). Tick the box "Merchant Enablement" and use the user id assigned by CardGate.net as the reference.

Signing up as a CardGate Services Merchant

Before the Service is enabled for a Bank Approved Merchant, they must sign the *CardGate.net Services - Provision of Services Agreement*, which is attached. Print off two copies, fill out and sign both copies and post to CardGate.net, PO Box 4297, Mulgrave, Vic 3170. We will sign and return one copy.

Amex and Diners

If the CommLink facility was set up initially without the ability to accept Amex/Diners, the Merchant may add this facility later. To do this they simply fax the Amex and Diners Merchant ID's to Merchant Maintenance, Comm Bank on 02 9768 1687 with appropriate reference to the CommLink CAIC and CATID's.

DATED THE _____ DAY OF _____ 20__

CARDGATE.NET PTY LTD

(A.B.N. 83 086 679 950)

- and -

THE MERCHANT:

CARDGATE.NET SERVICES

AGREEMENT FOR PROVISION OF SERVICES

CARDGATE.NET Reference: DOC-SF287 Services Merchant Agree

Issue 10 - 22/04/04

INDEX

| | Page No. |
|-----------------------------------------------------------------------|-----------------|
| 1. DEFINITIONS | 3 |
| 2. INTERPRETATION | 6 |
| 3. PROVISION OF SERVICES | 6 |
| 4. MERCHANTS COMPUTER SYSTEM AND INTERFACE SOFTWARE | 8 |
| 5. CHARGES & PAYMENT | 8 |
| 6. CONFIDENTIAL INFORMATION & NON-DISCLOSURE | 9 |
| 7. WARRANTIES, DISCLAIMERS AND LIMITATION OF LIABILITY | 10 |
| 8. OWNERSHIP OF INTELLECTUAL PROPERTY AND SOFTWARE LICENCE | 13 |
| 9. TERMINATION | 15 |
| 10. GENERAL | 15 |
| 11. NOTICES | 16 |
| 12. AUTHORITY TO EXECUTE | 16 |
| 13. SCHEDULE | 17 |

CARDGATE.NET SERVICES**AGREEMENT FOR PROVISION OF SERVICES**

This Agreement is made on the date specified in Schedule Item 1:

BETWEEN:

CARDGATE.NET PTY LTD (ABN 83 086 679 950) a company having its principal place of business at 1/200 Wellington Rd, Clayton in the State of Victoria, Australia ("CardGate.net")

and

The party whose name, ABN and address are set out in Schedule Item 2 ("the Merchant")

RECITALS

- A** CardGate.net developed and has the requisite Intellectual Property Rights to CardGate®, a Payment Gateway software product that operates exclusively with the Commonwealth Bank of Australia's COMMLINK™ on-line credit card authorisation and transaction system, which allows Merchants to conduct credit card transactions in real-time.
- B** The Commonwealth Bank of Australia ("the Bank") has provided CardGate.net with a leased telephone line for connection of a CardGate based computer system to the Bank's COMMLINK computer system.
- C** CardGate.net has developed CardGate based systems that allows the processing of credit card transactions over a private communications link and/or the Internet ("CardGate LEMOTO Service" and "CardGate Internet Service").
- D** The Merchant has a Credit Card Merchant Facility with the Bank, and has been approved by the Bank to offer credit card transactions to Cardholders.
- E** CardGate.net and the Merchant have agreed that CardGate.net will supply access to the CardGate Payment Gateway for processing credit card transactions over a communications link to the Merchant on the terms of this Agreement.

IT IS AGREED

1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

“Business Day” shall mean a day when banks are open for business in Melbourne, Victoria.

“the Bank” shall mean the Commonwealth Bank of Australia.

“CardGate System” means the system based on the CardGate Payment Gateway for the processing of credit card transactions over a private or Internet communications link as described in clause 3.4.

“CardGate Service” means the services to be supplied by CardGate.net to the Merchant described in clause 3.4 for the processing of credit card transactions over a private or Internet communications link using the CardGate Payment Gateway.

“Charges” shall mean the charges made by CardGate.net for providing the Services, as set out in clause 5.1, subject to any variations, additional charges, expenses, taxes or interest as provided by this Agreement.

“Commencement Date” shall mean the date set out in Schedule Item 3.

“COMMLINK” shall mean the Commonwealth Bank of Australia's COMMLINK™ on-line credit card authorisation and transaction system which allows merchants to conduct credit card transactions in real-time.

“Credit Card Transaction” means an attempted credit card payment/refund for goods or services to/from the Merchant.

“Cardholder” means a person who uses a credit card to pay for goods or services from the Merchant.

“Intellectual Property” shall mean all or any of the following:

- (a) Copyright, Trademarks;
- (b) EL rights pursuant to the *Circuit Layout Act* 1989 (Commonwealth);
- (c) Rights in circuit layouts, integrated circuits, or semi-conductor chips, including the right to copy and otherwise commercially exploit;
- (d) Trade secrets, know-how and confidential information;

“Manual” shall mean the CardGate Technical Manuals supplied by CardGate.net to the Merchant from time to time.

“Merchant” shall mean the person or company named in Schedule Item 2, and includes the Merchant’s successors, administrators and permitted assigns.

“Merchant’s Computer System” shall mean the computer hardware, computer peripherals and operating and application software upon which the Merchant’s transaction system is to operate, and includes any substituted computer system.

“Merchant Interface Software” shall mean any software that is supplied to the Merchant by CardGate.net pursuant to clause 7 of this Agreement for the purpose of interfacing the Merchant’s Computer System to the CardGate System.

“Services” shall mean the services described in clause 3.3.

“CardGate.net Merchant Interface Software” means Merchant Interface Software of which CardGate.net is the copyright owner.

“CardGate.net” shall mean CardGate.net Pty Ltd (ABN 83 086 679 950) of 16 Nyadale Drive, Scoresby in the State of Victoria, its successors and assigns.

2. INTERPRETATION

- 2.1 The headings used in this Agreement are included for convenience and reference only and shall not be construed as affecting the meaning and interpretation of this Agreement.
- 2.2 A reference in this Agreement to a statute includes all amendments to the statute and any statutes passed in substitution for the statute.
- 2.3 A reference to this Agreement shall extend to and include every renewal, extension, variation or amendment to this Agreement.
- 2.4 Schedules and Annexures form part of and are incorporated in this Agreement.
- 2.5 References to the singular include the plural and vice versa.
- 2.6 A reference to a person includes a body corporate.

3. PROVISION OF SERVICES

- 3.1 CardGate.net will use reasonable commercial endeavours to commence provision of the Services by the Commencement Date.
- 3.2 The Merchant acknowledges:
- (a) that the Services are to be supplied on a trial basis;
 - (b) that it may not be technically or commercially feasible for CardGate.net to commence provision of the Services by the Commencement Date, or at all;
 - (c) that the Merchant must notify CardGate.net as soon as practicable of any problems or deficiencies the Merchant becomes aware of in the operation of the CardGate Service;
 - (d) that the Merchant is not entitled to compensation or damages on any legal or equitable ground if CardGate.net fails to commence provision of the Services by the Commencement Date, or at all.

3.3 The Services shall consist of:

- (a) the CardGate LEMOTO Service and/or the CardGate Internet Service;
- (b) if agreed between the parties, the supply of the Merchant Interface Software in accordance with clause 4.3;
- (c) the provision of telephone support to the Merchant in connection with the CardGate Services between the hours of 9.00 a.m. and 5.00 p.m. on Business Days; best endeavours will be used to respond to the support requests within 1.5 hours;
- (d) the provision of telephone support via pager contact and support staff callback to the Merchant in connection with the CardGate Service during the hours the telephone service described in paragraph (c) does not operate; best endeavours will be used to respond to the support requests within 1.5 hours;
- (e) any other services CardGate.net agrees in writing to provide to the Merchant in connection with the CardGate Service.

3.4 Credit card transactions shall be processed as follows:

- (a) CardGate.net shall create and maintain a CardGate Service Processing Centre ("the CSPC");
- (b) The Merchant's Computer System will pass the following information to the CSPC:
 - (i) Merchant identification
 - (ii) Unique Merchant order number;
 - (iii) the total price of the goods or services;
 - (iv) Cardholder's credit card number and expiry date
- (c) the information described in paragraphs (b) will be used to form a credit card transaction request. This request will be transmitted to the Bank's COMMLINK computer system by CardGate.net's computer system using the CardGate Payment Gateway software and leased telephone line connected to the Bank;
- (d) the Bank's computer system will normally respond with notification of whether the transaction has been approved or not to the CardGate Payment Gateway. This response may be transmitted to the Merchant's Computer System in real-time or store in a file for later transfer.

4. MERCHANT'S COMPUTER SYSTEM AND INTERFACE SOFTWARE

- 4.1 The Merchant's Computer System must, in CardGate.net's opinion, be suitable to the task of commerce and connectivity with the CSPC.
- 4.2 The Merchant may need to install and test on the Merchant's Computer System prior to the Commencement Date, software which interfaces the Merchant's application software to the CardGate LEMOTO or Internet System.
- 4.3 If the Merchant requests CardGate.net to do so at least 14 days prior to the Commencement Date, CardGate.net may (but is not obliged to) supply the Merchant Interface Software to the Merchant prior to the Commencement Date at a price agreed between the parties on the terms of this Agreement.

5. CHARGES AND PAYMENT

- 5.1 CardGate.net shall charge for the Services described in paragraphs 3.3(a), (b), (c) and (d) according to the price list specified in Item 6 of the Schedule.
- 5.2 The charges for any services described in paragraph 3.3(d) will be agreed between the parties.
- 5.3 The Merchant shall be responsible for payment of all taxes, duties and other government charges payable in respect of the supply of the Services or the Merchant Interface Software.
- 5.4 CardGate.net shall invoice the Merchant at the billing address specified in Item 7 of the Schedule for Services provided during each calendar month.
- 5.5 The Merchant shall pay the amount owing to CardGate.net in full within 14 days of the date of the invoice.
- 5.6 If any amount payable to CardGate.net under this Agreement is not paid within 14 days of the due date, the Merchant shall pay interest to CardGate.net on the overdue amount at the rate set in accordance with the Penalty Interest Rates Act (Vic).

6. CONFIDENTIAL INFORMATION AND NON-DISCLOSURE

- 6.1 The parties have imparted and may from time to time impart to each other confidential information relating to their business and customers and matters relating to this Agreement. The parties shall use such confidential information solely for the purposes of carrying out their obligations under this Agreement, and shall not disclose either directly or indirectly to any third party such information, other than as required to carry out the purposes of this Agreement. Before making such disclosure to any person (other than the Bank), the party making the disclosure will obtain from the third party a binding confidentiality agreement, and will provide the other party with a copy of the confidentiality agreement.
- 6.2 Upon the expiry or termination of this Agreement, neither party shall itself, through any agent or otherwise, use or disclose the confidential information supplied to it by the other party, or acquired by it in any way pursuant to this Agreement, unless authorised by the other party in writing.
- 6.3 The parties acknowledge that the confidential information includes the information set out in Schedule Item 4 but excludes information:
- (a) that is in or enters the public domain other than by breach of this Agreement or the unauthorised disclosure of the confidential information by a third party;
 - (b) that one party can establish was already known to it prior to the disclosure of the information to it by the other party;
 - (c) the unrestricted release and use of which was approved in writing by the party disclosing the information.
- 6.4 The provisions of clauses 6.1 to 6.3 shall survive the termination or expiry of this Agreement by any means.

7. WARRANTIES, DISCLAIMERS AND LIMITATION OF LIABILITY

- 7.1 CardGate.net provides no express warranties in relation to the Services or the Merchant Interface Software.
- 7.2 The Merchant acknowledges that CardGate.net may be unable to supply the Services, or that the supply of the Services may be interrupted, due to:
- (a) the Bank refusing to approve or withdrawing approval of the CardGate LEMOTO System, Cardgate Internet System or the Merchant's Computer System;
 - (b) the Bank withdraws the Merchant's Merchant Facility, or the Merchant's approval to offer credit card transactions to Cardholders;
 - (c) changes made by banks or other financial institutions to their computer systems or terminals, or to the protocols which allow access to their computer systems; or
 - (d) defects or failures in banks' or other financial institutions' computer systems or terminals; or
 - (e) the Bank not allowing external interfacing of software with the Bank's computer systems or terminals; or
 - (f) operator error or data error; or
 - (g) changes to the Merchant's Computer System or terminals, including the configurations and the operating and application software; or
 - (h) defects or failures in Internet providers' computer systems or telephone network; or
 - (i) the unavailability of a connection to the Merchant, the Cardholder or CardGate.net;
 - (j) acts of terrorism, war, sabotage, electronic infiltration ("hacking") or software viruses.

7.3 Except where:

- (a) conditions or warranties are implied into this Agreement for the supply of goods or services by CardGate.net to the Merchant by the Trade Practices Act 1974 (Cth), other similar laws of the States and Territories of the Commonwealth of Australia or any other applicable laws; and
- (b) such implied conditions or warranties cannot lawfully be excluded; CardGate.net excludes all implied conditions and warranties.

7.4 Where such limitation of liability is not prohibited or avoided by the laws of the Commonwealth of Australia and its States and Territories, the liability of CardGate.net for:

- (a) any breach of any implied conditions and warranties (other than implied conditions and warranties as to title, encumbrance and quiet enjoyment of goods supplied by CardGate.net to the Merchant) in relation to the supply of the Services or any other goods or services supplied to the Merchant by CardGate.net under this Agreement; and
- (b) any loss or damage arising out of or in relation to the supply of the Services or any other goods or services supplied to the Merchant by CardGate.net, shall be limited, to the following:
 - (i) in the case of a supply of goods, to any of the following at CardGate.net's option:
 - (A) payment of the cost of replacing the goods or acquiring equivalent goods;
 - (B) payment of the cost of modifying or repairing the goods;
 - (ii) in the case of any services provided under this Agreement, to one of the following, at CardGate.net's option:
 - (A) the re-performance of the services; or
 - (B) the payment by CardGate.net of the cost of re-performance of the services.

- 7.5 The Merchant agrees that to the extent that such liability may be limited under the laws of the Commonwealth of Australia and its States and Territories, CardGate.net shall not be liable on any legal or equitable basis, for any loss or damage incurred by the Merchant in connection with this Agreement, the Services or the Merchant Software, except as set out in clause 7.4. This exclusion of liability includes, but is not limited to, liability for economic loss, loss of custom, loss of profits, loss of use of the Merchant Interface Software, loss of use of data or information of any kind however caused, failure of the CardGate Internet System or the Merchant Interface Software System to operate at any time for any reason, or any liability of the Merchant to third parties.
- 7.6 Nothing in this Agreement is intended or shall be construed as excluding or modifying any warranties or conditions implied or any rights or remedies conferred on the Merchant or any liability imposed on CardGate.net by the *Trade Practices Act* 1974 (C'th) and similar laws of the States and Territories of the Commonwealth of Australia and any other laws applicable to this Agreement with respect to the supply of goods or services.

8. OWNERSHIP OF INTELLECTUAL PROPERTY AND SOFTWARE LICENCE

- 8.1 If CardGate.net supplies the Merchant with Merchant Interface Software, all the provisions of this clause 8 shall apply. The provisions of this clause relating to the Manual shall apply if CardGate.net does not supply the Merchant with Merchant Interface Software.
- 8.2 The Merchant acknowledges and agrees that CardGate.net is the owner of the CARDGATE.NET Merchant Interface Software and the Intellectual Property subsisting in the CARDGATE.NET Merchant Interface Software throughout the world.
- 8.3 CardGate.net grants to the Merchant and the Merchant accepts a non-exclusive non-transferable licence to use the CARDGATE.NET Merchant Interface Software on the Merchant's Computer System upon and subject to the terms and conditions set out below ("the Licence").
- 8.4 The Merchant agrees and acknowledges that this Licence is not a sale of the CARDGATE.NET Merchant Interface Software. CardGate.net retains legal title to the CARDGATE.NET Merchant Interface Software and the Intellectual Property subsisting or which may subsist in the CARDGATE.NET Merchant Interface Software.
- 8.5 The Merchant shall not assign, transfer, sub-licence or otherwise deal with the Licence or any of the rights granted under the Licence without the prior written consent of CardGate.net.
- 8.6 The Licence only entitles:
- (a) the Merchant to use the CARDGATE.NET Merchant Interface Software on the Merchant's Computer System. If the Merchant wishes to use the CARDGATE.NET Merchant Interface Software on an alternative computer system, the Merchant must first obtain the written approval of CardGate.net;
 - (b) the Merchant to reproduce the CARDGATE.NET Merchant Interface Software where the making of copy is an essential step in the normal use of the CARDGATE.NET Merchant Interface Software;

- (c) the Merchant to make and keep a reasonable number of back-up copies of the CARDGATE.NET Merchant Interface Software for the sole purpose of being used by the Merchant, in the event that the original copy of the CARDGATE.NET Merchant Interface Software supplied under this Agreement is lost, destroyed or rendered unusable;
- (d) the Merchant to make copies of the Manual for its own internal use, provided that each copy of the Manual that is made is labelled with the following copyright notice:

© CardGate.net Pty Ltd.

8.7 The Merchant shall not:

- (a) transmit the CARDGATE.NET Merchant Interface Software on the internet or supply the CARDGATE.NET Merchant Interface Software to others as part of a bureau service or similar service or for resupply alone or as a component of any other product;
- (b) subject to clause 8.5, sell, hire, lease, rent, give away, lend, licence, distribute or grant any other rights or otherwise transfer or deal with or dispose of the CARDGATE.NET Merchant Interface Software;
- (c) except as permitted by clause 8.6, adapt, modify, disassemble, decompile, translate or reverse engineer the CARDGATE.NET Merchant Interface Software or any part of it or create a derivative work based on the CARDGATE.NET Merchant Interface Software or any part of it;
- (d) except as permitted by clause 8.6(d), reproduce, copy, adapt, modify or otherwise reproduce the Manual or any part of it;
- (e) remove, conceal, deface, amend or in any way alter the copyright, trade mark and other proprietary notices appearing on or contained within the CARDGATE.NET Merchant Interface Software and Manual;
- (f) procure, permit or authorise the doing of any act prohibited by paragraphs (a)-(e).

8.8 The Merchant shall comply with any restrictions set out in Annexure "A" on the use of Merchant Interface Software which is not CARDGATE.NET Merchant Interface Software.

9. TERMINATION

- 9.1 Either party may terminate this Agreement at any time prior to the Commencement Date by giving the other party notice in writing.
- 9.2 Either party may terminate the Agreement on or at any time after the Commencement Date by giving the other party 14 days notice in writing.
- 9.3 CARDGATE.NET may terminate this Agreement at any time on or after the Commencement Date if the Merchant breaches clauses 6.1, 8.5, 8.7 or 8.8.
- 9.4 The Merchant may terminate this Agreement at any time on or after the Commencement Date if CARDGATE.NET breaches clause 6.1 or 6.4.

10. GENERAL

- 10.1 This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to its subject matter.
- 10.2 This Agreement may only be varied or amended by an instrument in writing signed by duly authorised representatives of the parties.
- 10.3 In the event that any, or any part of the terms, conditions or provisions contained in this Agreement shall be determined to be invalid, unlawful or unenforceable to any extent, that term, condition or provision shall be severed from the remaining terms, conditions and provisions, which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 10.4 This Agreement shall be governed by the laws in force in the State of Victoria, Commonwealth of Australia.

11. NOTICES

- 11.1 Any notice to be given to one party by the other shall be in writing and shall either be delivered in person, or sent by security post or facsimile transmission to the party's address or facsimile number specified in Schedule Item 5.
- 11.2 A notice shall have effect for the purposes of this Agreement and shall be deemed to have been received by the party to whom it was made:
- (a) if delivered by hand, upon receipt by the party to whom the communication is addressed or upon receipt by any other person then upon the premises at the relevant address who reasonably appears to be authorised to receive post or other message on behalf of the relevant party;
 - (b) if sent by facsimile transmission, upon the transmission of the communication to the relevant facsimile number and the receipt by the transmitting facsimile machine of an answerback code showing that the facsimile message has been received properly by the facsimile machine to which it was transmitted;
 - (c) if sent by security post, five (5) days after the date upon the registration receipt provided by the relevant postal authority.
- 11.3 Each party shall be obliged to send a notice to the other party in accordance with this clause of any changes in its address or facsimile number.

12. AUTHORITY TO EXECUTE

- 12.1 Each of the parties warrants its power to enter into this Agreement.
- 12.2 Any individual executing this Agreement on behalf of the parties represents and warrants that he or she has been fully empowered to execute this Agreement and that all necessary action to authorise the execution of this Agreement has been taken.

SCHEDULE

Item 1: **Date of Agreement:** _____

Item 2: **The Merchant (ie who we are dealing with):**

Name: _____
Address: _____

Telephone: _____ Fax _____
E-mail _____

Item 3: **Commencement Date:** _____
(Clause 1)

Item 4: **Confidential Information:**
(Clause 6.3) CARDGATE.NET's Confidential Information includes the following:

1. all information relating to the CardGate Internet System or the business of CARDGATE.NET or the business of any third party which is marked or identified as "confidential";
2. all correspondence between CARDGATE.NET and the Merchant which is marked or identified as "confidential";
3. all discussions and negotiations between the parties relating to the supply of the Services or the Merchant Interface Software;
4. the terms of this Agreement;
5. the Manual;
6. any other information which CARDGATE.NET or its employees disclose, and identify as "confidential", whether verbally or in writing;

any information communicated to the Merchant in circumstances where the Merchant should realise that the information is being communicated in confidence.

The Merchant's Confidential Information includes the following:

1. Names and credit card details of the Cardholders.

Item 5: Notices:
 (Clause 11) **CardGate.net Pty Ltd** (ABN 83 086 679 950)
 PO Box 4297
 Mulgrave Vic 3170
 Australia
 Tel: (03) 9582 7000 Fax: (03) 9582 7001

The Merchant (ie where Notices are to be sent):

Name: _____
 Address: _____
 Telephone: _____ Fax _____

Item 6: Price Schedule:
 (Clause 5) Document (tick): CIS-PS, or LEMOTO-PS or attached
 Document Issue: _____ Document Date _____

Item 7: Billing Details (ie where the invoice is to be sent):

(Clause 5) Merchant: _____
 Contact: _____
 Address: _____
 Telephone: _____ Fax _____
 E-mail: _____

SIGNED by:
 Name: _____
 Position: _____

on behalf of CardGate.net Pty Ltd (ABN 086 679 950)

Signature _____ Date: _____

SIGNED by:
 Name: _____
 Position: _____

on behalf of the Merchant

Signature _____ Date: _____