

Merchant Software Licence Agreement

Electronic Funds Transfer Software

This Software is password protected against unauthorised use. The Software will not operate without an access key issued by CardGate.net. CardGate.net will only issue access keys for the Software to licensed users. To become a licensed user, the Merchant is required to correctly complete and return to CardGate.net, the Merchant Software Licence Agreement.

MERCHANT SOFTWARE LICENCE AGREEMENT

This Licence Agreement is made on the date specified in Schedule Item 1 between **CardGate.net Pty Ltd** (A.C.N. 086 679 950) of 16 Nyadale Drive, Scoresby in the State of Victoria, Australia and the Merchant named in Schedule Item 2 for the licence of the Software upon and subject to the terms and conditions set out below:

THE PARTIES IN CONSIDERATION OF THE MUTUAL PROMISES MADE HEREIN AND INTENDING TO BE LEGALLY BOUND HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

In this Licence Agreement, unless the contrary intention appears:

“**Access key**” shall mean the password required for the Software to operate which is issued by CardGate.net to the Merchant as provided by this Licence Agreement.

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

“**Certificate**” shall mean the “CardGate.net EFTLink Certificate” which CardGate.net issues to the Merchant for the Software licensed under this Agreement. The Certificate shall include the Merchant Name, Location, Dealer, Date, Merchant ID, Serial Number and Access Key.

“**Dealer**” shall mean the person or company named in Schedule Item 3 who is authorised by CardGate.net to supply the Software to the Merchant.

“**Documentation**” shall mean the user manual and associated documentation for the Software and includes upgrades, modifications and customised versions and new releases of the Documentation licensed to the Merchant.

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

- (a) Trade and service marks and applications for registration for any such marks and any trade or brand names;
- (b) Patents and applications for the grant of any such patents;
- (c) Copyright subsisting in written material, designs, logos, insignia, computer programs, software, data, firmware, hardware, multi-media products or other works;
- (d) Designs (whether or not registered or protected by copyright);
- (e) EL rights pursuant to the Circuit Layout Act 1989 (Commonwealth);
- (f) Rights in circuit layouts, integrated circuits, semi-conductor chips including the right to copy and otherwise commercially exploit;
- (g) Trade secrets, know-how, confidential information and all other intellectual and industrial property of all kinds.

“Licence Agreement” shall mean this Merchant Software Licence Agreement and extends to and includes every renewal, extension, variation or amendment to this Licence Agreement.

“Licence Fee” shall mean the fees payable by the Merchant for the licence of the Software.

“Location” shall mean the geographical location(s) designated in the Certificate for the licensed use of the Software and includes any substituted and additional sites as agreed upon by the parties in writing.

“Merchant” shall mean the person or company named in Schedule Item 2 who is licensed to use the Software in accordance with the terms of this Licence Agreement and includes the Merchant’s successors, administrators and permitted assigns.

“Merchant Application” shall mean the computer program detailed in Schedule Item 5 which interfaces with the Software, and includes point of sale and billing applications.

“Merchant’s Computer System” shall mean the computer hardware peripherals, the point of sale electronic fund transfer terminals and operating and application software designated in Schedule Item 6 upon which the Software is to operate and includes any substituted computer system.

“Software” shall mean the described software in Schedule Item 7 which is licensed to the Merchant by CardGate.net and has the Merchant ID, Serial Number and Access key set out the Certificate and includes any upgrades, modifications, enhancements, customised versions and new releases of the Software which may be supplied to the Merchant by CardGate.net for a fee as provided by this Licence Agreement.

“Software Owner” means the person whose name is set out in Schedule Item 5.

“Terminal ID” shall mean the unique terminal number that identifies the pin pad to the bank or financial institution and which is specified in the Certificate.

2. SOFTWARE LICENCE

Licence

- 2.1 CardGate.net grants to the Merchant and the Merchant accepts a non-exclusive non-transferable (subject to Clause 2.6) licence to use the Software and Documentation at the Site upon and subject to the terms and conditions set out below (“the Licence”).
- 2.2 The terms and conditions of this Licence Agreement will apply to all additional copies of the Software and Documentation which may be supplied to the Merchant after the date of this Licence Agreement unless the parties agree otherwise in writing.
- 2.3 The Licence shall commence upon the date that CardGate.net issues the Merchant the Certificate for the Software and shall continue into perpetuity, unless terminated in accordance with the provisions of clause 9. CardGate.net will only issue the Certificate to the Merchant if CardGate.net has received this Licence Agreement correctly completed and signed by the Merchant and payment for the Software. In the case of payment by cheque, payment will not be deemed to be made until the cheque has been cleared.
- 2.4 CardGate.net may issue multiple Certificates under the Licence Agreement where:
- (a) the Software is licensed to be used on more than one terminal. Each terminal requires its own Access Key;
 - (b) the Software is to be used at different Locations by the Merchant;
 - (c) the installation of the Software on multiple terminals is to take place over a period of time.
- 2.5 The Merchant agrees and acknowledges that this Licence is not a sale of the Software and Documentation. The Software Owner, which has licenced CardGate.net to grant this licence to the Merchant, retains legal title to the Software and Documentation and the Intellectual Property subsisting or which may subsist in the Software and Documentation. Risk of loss or damage to the copy or copies of the Software and Documentation provided pursuant to this Licence Agreement to the Merchant passes to the Merchant when the software is installed on the Merchant’s computer system.
- 2.6 The Licence is personal to the Merchant who shall not be entitled to assign, transfer, sub-license or otherwise deal with any of the rights granted hereunder without the prior written consent of CardGate.net.

Merchant’s Rights Under the Licence

- 2.7 The Licence entitles the Merchant to:
- (a) use the Software only on the Merchant’s computer system and at the Site, solely for the Merchant’s own use. The Software may be used on a computer network or multi-user computing environment if the Merchant has paid the Licence fees applicable to computer networks or multi-user computing environments;
 - (b) reproduce or make an adaptation of the Software where the new copy or adaptation is created as an essential step in the utilisation of the Software in conjunction with the Merchant’s computer system and is not used in any other manner;
 - (c) make and keep one back-up copy of the Software in machine readable form on diskettes solely for the purpose of being used in the event that the original Software supplied pursuant to this Licence Agreement is lost, destroyed or rendered unusable. The Merchant shall label the back-up copy of the Software with the name of the computer program, the serial and version number and the copyright and trade mark notices appearing on the original copy of the Software supplied to the Merchant.

Restrictions on Use

2.8 The Merchant shall not:

- (a) use the Software on a computer network or multi-user computer environment unless the Merchant has paid the Licence fees applicable to computer networks or multi-user environments;
- (b) transmit the Software on the Internet or supply the Software to others as a part of a bureau service or similar service or for resupply alone or as a component of any other product;
- (c) subject to clauses 2.6 and 2.9, sell, hire, loan, licence, distribute or grant any other rights or otherwise transfer or deal with or dispose of the Software;
- (d) do any acts which circumvent the copy protection code which forms part of the Software;
- (e) except as permitted by clause 2.7(b), reproduce, adapt, modify, disassemble, decompile, translate, reverse engineer the Software or any part thereof or create a derivative work based on the Software or any part thereof;
- (f) reproduce, copy, adapt, modify or otherwise reproduce Documentation or part thereof;
- (g) remove, conceal, deface, amend or in any way alter the copyright, trade mark and other proprietary notices appearing on or contained within the Software or Documentation;
- (h) procure, permit or authorise the doing of the acts referred to in sub-paragraphs (a) - (f) of this clause.

2.9 The Merchant shall not finance the acquisition of the Software and Licence by lease or hire purchase arrangement with a third party without first obtaining CardGate.net's consent in writing. CardGate.net may withhold its consent if the third party does not agree to be bound by this Licence Agreement.

3. MODIFICATIONS, UPGRADES AND ENHANCEMENTS

3.1 The Merchant acknowledges and agrees that modifications, upgrades and enhancements may be required to the Software and Documentation in the event that:

- (a) banks or other financial institutions change protocols which allow access to their computer systems or change their computer systems or terminals;
- (b) changes are made to laws, regulations or rules governing or regulating banking or other financial institutions or the provision of credit;

and the Merchant shall be required to pay an additional fee for the modified, upgraded or enhanced Software and Documentation if (and only if) the Merchant elects (by giving written notice to CardGate.net) to accept and use the modified, upgraded or enhanced Software.

3.2 CardGate.net shall not be liable to the Merchant for any direct or indirect loss or damage (including economic loss and special and consequential damage), liability, expense or costs caused or arising out of :

- (a) modifications, upgrades or enhancements required to the Software or Documentation by reason of the matters set out in clause 3.1(a)-(b);
- (b) the Software not being operational by reason of the matters referred to in clauses 3.1(a)-(b).

- (c) CardGate.net not being able to make or make in a timely manner the modifications, upgrades or enhancements required to the Software or Documentation by reason of the matters set out in clause 3.1(a)-(b).

4. SUPPORT FOR THE SOFTWARE

- 4.1 Technical support services and advice with respect to the use, operation and maintenance of the Software can be obtained from the Dealer.
- 4.2 In the event that the Dealer is unable to provide the technical support services and advice for the Software required by the Merchant, CardGate.net shall provide such services upon written request from the Merchant at CardGate.net's then current fee schedule for support services.
- 4.3 CardGate.net's technical support and advice services are only available during business hours 9.00 am - 5.00 pm, Monday to Friday, excluding public holidays.

5. SECURITY

- 5.1 The Merchant shall be responsible for the use, supervision, management and control of the Software. The Merchant shall ensure that the Software is protected at all times from unauthorised access, use or misuse and loss, damage or destruction.

Back-up copies of Merchant's Data and Files

- 5.2 The Merchant shall back-up copies of its data and files on a regular basis and keep the said copies in a safe and secure place.

6. WARRANTIES AND DISCLAIMERS

- 6.1 CardGate.net warrants that the Software Owner is the owner of the Intellectual Property subsisting or which may subsist in the Software and Documentation except for third party libraries.
- 6.2 CardGate.net warrants that it is licenced by the Software Owner to grant the Licence.
- 6.3 Subject to clauses 6.4 and 6.5, CardGate.net warrants that the Software will operate on computer systems having the configuration set out in the Documentation and will perform on such computer systems in accordance with the functional and technical specifications set out in the Documentation.
- 6.4 CardGate.net does not warrant that the Software is completely error or bug free or that the Documentation is completely error free.
- 6.5 The warranties referred to in clause 6.3 and 6.4 do not apply where the Software does not operate or perform in accordance with the functional and technical specifications in the Documentation due to:
 - (a) changes made by banks or other financial institutions to their computer systems or terminals, or protocols which allow access to their computer systems; or
 - (b) defects or failures Banks' or other financial institutions' computer systems or terminals; or
 - (c) banks not allowing external interfacing of software with their computer systems or terminals; or
 - (d) operator error or data error; or
 - (e) changes to the Merchant's computer system, including the configurations and the operating and application software.
- 6.6 CardGate.net gives no express warranties other than those set out in this Section.

- 6.7 Except where:
- (a) conditions or warranties are implied into this Licence Agreement for the supply of the Software, 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, including, but not limited to, implied conditions or warranties with respect to merchantability or fitness for particular purpose.

- 6.8 Where the Software does not conform with the warranties referred to in clauses 6.1 and 6.2 or any warranty implied into this Licence Agreement 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, CardGate.net shall at its sole discretion either rectify the defect in the Software or Documentation or refund the fees paid for the Software or Material.

7. LIMITATION OF LIABILITY

- 7.1 Subject to the provisions of clause 7.2 and 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 or express conditions and warranties (other than implied conditions and warranties as to title, encumbrance and quiet enjoyment of the Software or Documentation supplied under this Licence Agreement); and
- (b) any loss or damage (including economic loss and special and consequential damages)

arising out of or in relation to the supply of the Software, Documentation or any goods or services provided by CardGate.net shall be limited, at CardGate.net's option to any one or more of the following:

- (i) in the case of the Software, Documentation or any goods supplied by CardGate.net, to the lesser of:
 - (A) the cost of the Software or Documentation or any goods; or
 - (B) the costs of making modifications to the Software, Documentation or any goods;
- (ii) in the case of any services supplied by CardGate.net, to the lesser of:
 - (A) the re-performance of such services; or
 - (B) the payment by CardGate.net of the costs of re-performance of such services.

- 7.2 The Merchant agrees that to the extent that such liability may be limited under the laws of the Commonwealth of Australia, its States and Territories, CardGate.net shall not be liable for any special, direct or indirect incidental and/or consequential damages, including but not limited to economic loss, loss of use of the Software, loss of use of data or information of any kind however caused or failure of the Software to operate at any time for any reason except as set out in clause 7.1.

8. NON-EXCLUDABLE STATUTORY RIGHTS TO BE RETAINED

- 8.1 Nothing in this Licence 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 Licence Agreement with respect to the supply of the Software, goods or services, if the law in question may not lawfully be modified or excluded.

9. TERMINATION

- 9.1 CardGate.net shall be entitled to terminate this Licence Agreement by giving notice in writing to the Merchant whereupon this Licence Agreement shall absolutely terminate and cease to have effect if:

- (a) the Merchant breaches clause 2.8 and 2.9 of this Licence Agreement;
- (b) the Merchant breaches any other term of this Agreement and fails to rectify the breach within 30 days of written notice being given by CardGate.net, requiring rectification thereof;
- (c) the Merchant defaults in payment of any moneys due and payable to CardGate.net;
- (d) the Merchant (if a natural person) commits any act of bankruptcy or becomes a bankrupt;
- (e) the Merchant (if a corporation) goes into liquidation or is wound up (other than for the purposes of reconstruction or amalgamation);
- (f) the Merchant has a receiver or receiver manager appointed over any of its assets or proposes to enter into any scheme of arrangement or composition with its creditors;
- (g) the Merchant (if a partnership) is dissolved or terminated or the members are changed without prior written notice to CardGate.net or any member of the partnership commits an act of bankruptcy or becomes bankrupt or is in jeopardy of becoming subject to any form of insolvency administration;
- (h) CardGate.net is unable to for any reason whatsoever to make the modifications, upgrades or enhancements required to the Software or Documentation by reason of the matters set out in clause 3.1(a)-(b);
- (i) (unless CardGate.net and the Merchant have agreed as contemplated by clause 3.1 that CardGate.net will modify, upgrade or enhance the Software to enable it to operate) the Software does not operate or cannot be used because:
 - (i) the bank or other financial institution has changed the protocols which allow access to their computer systems or terminals or have changed their computer systems or terminals;
 - (ii) changes have been made to laws, regulations or rules governing or regulating banking or other financial institutions or the provision of credit;
 - (iii) the bank or other financial institution no longer allows interfacing with the bank's computer systems and/or terminals.

- 9.2 Any lawful termination of this Licence Agreement shall be without prejudice to the rights and liabilities of the parties arising prior to termination.

- 9.3 Upon the termination of this Licence Agreement, the Merchant shall:

- (a) immediately cease the use of the Software;
- (b) within seven (7) days of the termination of this Licence Agreement:
 - (i) return to CardGate.net or the Dealer the Software and Documentation and certify in writing to CardGate.net that it has not retained any copies of the Software and Documentation or parts thereof;
 - (ii) erase from all storage devices the Software.

- 9.4 The provisions of clauses 9.2 and 9.3 shall survive the termination of this Licence Agreement.

10. ASSIGNMENT

This Licence Agreement and the rights granted pursuant to this Licence Agreement cannot be assigned without the prior written approval of CardGate.net.

11. GOVERNING LAW

11.1 This Licence Agreement shall be construed and governed by the laws of the State of Victoria, Australia.

12. FORCE MAJEURE

12.1 CardGate.net shall not be liable for delays in the performance of any of its obligations under this Licence Agreement due directly or indirectly to causes beyond its control, including but not limited to acts of God, strikes or inability to obtain labour or materials on time.

13. SEVERABILITY

13.1 In the event that any, or any part of the terms, conditions or provision contained in this Licence Agreement shall be determined invalid, unlawful or unenforceable to any extent then such 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.

14. WAIVER

14.1 No forbearance, delay or indulgence by CardGate.net in enforcing the provisions of this Licence Agreement shall prejudice or restrict its rights, nor shall any waiver of its rights operate as a waiver of any subsequent breach or in any way affect the validity of the whole or any part of the Licence Agreement nor prejudice CardGate.net's rights to take subsequent action.

15. NOTICES

15.1 All notices and any permission, consent, approval or authorisation required to be given to this Licence Agreement by CardGate.net or the Merchant shall be in writing and delivered either in person or sent by post or facsimile transmission to the addresses or to the facsimile numbers specified in Schedule Item 8.

16. ENTIRE LICENCE AGREEMENT

16.1 This Licence Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. No addition to, or variation of, any provision of this agreement shall be binding upon the parties unless made by written instrument signed by a duly authorised representative of each of the parties hereto.

17. ACKNOWLEDGMENT

17.1 The Merchant acknowledges that it has carefully read the provisions of the Licence Agreement and has understood them.

18. AUTHORITY TO EXECUTE

18.1 Each of the parties warrants its power to enter into this Licence Agreement.

18.2 Any individual executing this Licence Agreement on behalf of the parties represents and warrants that he or she has been fully empowered to execute this Licence Agreement and that all necessary action to authorise the execution of this Licence Agreement has been taken.

SCHEDULE

IMPORTANT: PLEASE FILL IN THIS SCHEDULE!

Item	
1	Date of Licence Agreement
2	Merchant: Name: Address: Telephone: Facsimile: E-mail: Contact Person:
3	Dealer: Name:
4	Merchant type: e.g. grocery store/hardware store/milk bar
5	Software Owner: UMD IP Pty Ltd (A.C.N. 006 132 065)
6	Merchant POS Computer System: e.g. Pentium 100PC, MSDOS 6.22
7	Software: Name: EFTLink EFTPOS Interface Software
8	Notices: CardGate.net Pty Ltd PO Box 9250, Scoresby, Vic 3179 Merchant Name: Address: Telephone: Facsimile: Contact Person:

IN WITNESS WHEREOF the parties have entered into this Agreement on the date specified in Schedule Item 1.

THE COMMON SEAL of **CARDGATE.NET PTY LTD**)
A.C.N. 086 679 950 was)
hereunto affixed in accordance with its Articles)
of Association in the presence of:)

_____ Director

_____ Secretary

MERCHANT

THE COMMON SEAL of)
)
 was)
 hereunto affixed in accordance with its Articles)
 of Association in the presence of:)

_____ Director

_____ Secretary

OR

SIGNED FOR AND ON BEHALF OF _____

by _____

_____ Signature

_____ Title