

**LOYALTY CORP**  
**PROGRAM SUPPLY AGREEMENT**

**THIS AGREEMENT** is made on the 28<sup>th</sup> day of June 2019 between the parties ("**Effective Date**")

("Supplier") Loyalty Corp Australia Services Pty. Ltd. (ABN 39 615 958 873) of 1,1183 Toorak Road, Camberwell VICTORIA 3124

and

("Client") Name: Westfund Limited

ABN: 55 002 080 864

Address: 59 Read Avenue, Lithgow NSW 2790

**BACKGROUND**

- A. Supplier provides a branded Loyalty, Rewards, Membership and Payments Software Platform to the Client and its Client Members ("**Program**").
- B. Client agrees to subscribe to the Program in accordance with the terms and conditions of this Agreement.

**THE PARTIES AGREE** as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 Definitions

Definitions In this Agreement, unless the contrary intention appears:

**Agreement** means the terms and conditions set out in this document including the attached Schedules and any other annexures or documents incorporated by reference into this document.

**Authorised Person** means in relation to a Party:

- (a) the directors, secretary and any other person appointed to act as an authorised officer of that party;
- (b) the employees of that party;
- (c) the legal, financial and other advisers of that party; and
- (d) the respective officers and employees of those legal, financial and other advisers.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the State of Victoria, Australia.

**Client** means the Client specified at the commencement of this Agreement.

**Client Member** means an individual who is a member or customer under the Client's branded Program.

**Confidential Information** means all Information designated as confidential by the Disclosing Party which is disclosed to or acquired by the Receiving Party or the Receiving Party's Authorised Persons before or after the date of this Agreement, whether verbally, in writing or in electronic or machine readable form but does not include Information that:

- (a) the Receiving Party can prove by contemporaneous written documentation was in the lawful possession of the Receiving Party before the Disclosing Party had any dealings with

- the Receiving Party or was independently generated by the Receiving Party or on its behalf;
- (b) is in the public domain otherwise than as a result of a breach of this agreement or any other obligation of confidentiality owed to the Disclosing Party; or
  - (c) was legally and properly obtained by the Receiving Party from any other source without restriction on further disclosure.

**Consequential Loss** has the meaning given to it in clause 11.3 of this Agreement.

**Disclosing Party** means a party who discloses its Confidential Information to the Receiving Party.

**Documentation** means any user guides or any other materials related to the Program generally made available by the Supplier to Client.

**Effective Date** means the date specified at the head of this Agreement on which the Agreement is signed by the parties.

**Fees** means the relevant amounts payable by Client as specified in **Schedule 1**.

**Information** means information regardless of form relating to or developed in connection with the Disclosing Party or its business including computer software, financial affairs, projections, forecasts, accounts, prospects, strategies, business processes and system functionality, business operations, assets, liabilities, customers, personnel, formulae, contracts, technology, concepts, product and stock and sales information.

**Insolvency** means in relation to a body corporate, a liquidation or winding up, the appointment of a controller, administrator, receiver, manager or similar insolvency administrator to a party or any substantial part of its assets or the entering into a scheme or arrangement with creditors, or in relation to an individual, becoming bankrupt or entering into a scheme or arrangement with creditors or, in relation to a body corporate or an individual, the occurrence of any event that has a substantially similar effect to any of the above events.

**Intellectual Property Rights** or **IPR** means all rights in relation to any trade marks, copyright, data, patents, patentable inventions and designs, whether existing now or in the future and whether or not registered or registrable, and includes any rights subsisting in or relating to trade secrets and know how.

**Loyalty, Rewards, Membership and Payments Software Platform** means the operating digital platform developed by the Supplier which controls and delivers the Program.

**Products** means the goods or services provided by Retail Partners through the Program to Client Members.

**Program** means the branded Loyalty, Rewards, Membership and Payment Software Platform and associated services specified in the Agreement which is licensed and supplied to the Client.

**Program Commencement Date** means the date specified in **Schedule 1**, which outlines the date that the Term commences.

**Program Terms and Conditions** means the terms and conditions which form part of this Agreement and relate to the use of the Program by Client and the Client's Members, and which are specified in **Schedule 3**.

**Receiving Party** means a party who receives the Confidential Information from or on behalf of the Disclosing Party.

**Rebate** means the value payable to the Client, whether as Retail Rebate or Concierge Rebate, as specified in **Schedule 1**.

**Retail Partner** means the issuer of offers, Products or Rewards, made available to the Supplier through the Program, for redemption by the Client and Client Members.

**Reward** means Store Cards, Products or any other services which can be redeemed by Client Member as part of the Program.

**Store Cards** means stored value cards, reward cards, gift cards or any other physical or digital cards issued by the Retail Partner, and supplied by the Supplier for the Program.

**Term** means the period in which the Program is licenced to the Client from the Program Commencement Date, as specified in Schedule 1 of this Agreement.

## 1.2 Interpretation

In this agreement, headings are inserted for convenience only and do not affect the interpretation of this agreement, and unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include the other genders;
- (c) if words or phrases are defined, their other grammatical forms have a corresponding meaning;
- (d) a reference to:
  - (i) a person includes an individual, a partnership, a body corporate, a joint venture, an association (whether incorporated or not), a government and a government authority or agency;
  - (ii) a party includes the party's executors, legal personal representatives, successors, transferees and assigns;
  - (iii) unless indicated otherwise, "\$" or dollars means Australian dollars and a reference to payment means payment in Australian dollars;
  - (iv) legislation includes any statutory modification or replacement and any subordinate or delegated legislation issued under that legislation; and
  - (v) a law includes any statute, regulation, by-law, scheme, determination, ordinance, rule or other statutory provision (whether Commonwealth, State or municipal); and
- (e) if the day on or by which something must be done is not a Business Day, that thing must be done on the next Business Day.

## 2. LICENCE RIGHTS

2.1 The Supplier grants to the Client a fully paid-up, non-exclusive, non-transferable license (except as permitted in this Agreement) for the Term, to allow the Client and its Client Members to access and use the Program as a service over the public internet, subject to the following conditions:

- (a) the Client pays all Fees due and payable to the Supplier;
- (b) the Client must comply at all times with the terms and conditions of this Agreement;
- (c) the Client and the Client Members must at all times comply with the Program Terms and Conditions;
- (d) the Client shall use the Program in accordance with any Documentation provided by the Supplier in conjunction with the Program;
- (e) the Client shall not reverse engineer, decompile, translate, disassemble or attempt to discover any source code or underlying ideas or algorithms of the Program or any other software forming part of the Program;
- (f) the Client shall not create any derivative works based on the Program or any other software forming part of the Program;

- (g) other than making the Program available for use by its Client Members in accordance with this Agreement, the Client shall not transfer, sell, lease, lend, disclose, or use for service bureau purposes the Loyalty and Rewards Software Platform or any other software forming part of the Program;
  - (h) the Client shall not remove or modify any Program trade marks, markings or any other notice of the Supplier's proprietary rights on the Program and or any related Documentation; and
  - (i) the Client shall not access, scrape, copy, monitor or use any portion of the Program or any materials or other content on the Application by using any robot, "bot," spider, web crawler or other similar automatic device.
- 2.2 Except for the rights expressly granted in this Agreement or the applicable Program, the Supplier does not license or transfer to Client or Client Members any of the Supplier's technology or other Intellectual Property Rights.
- 2.3 Supplier reserves all rights not specifically granted in this Agreement.

### 3. **OBLIGATIONS**

#### 3.1 **Obligations of Supplier**

During the period of this Agreement, the Supplier shall perform the following obligations:

- 3.1.1 During the Term, in the provision of the Program to the Client, the Supplier shall provide the following services to the Client and Client Members:
- (a) secure access to a branded Program;
  - (b) support and assistance in connection with the supply of the Program through access to a 1300 telephone number and an email address to be made available for Client Members' enquiries; and
  - (c) responding to Client enquiries in a reasonable timeframe for issues pertaining to the Program.
- 3.1.2 The Supplier shall pay Rebates to the Client as stipulated in **Schedule 1**.
- 3.1.3 The Supplier must:
- (a) comply with all applicable laws; and
  - (b) at all times hold any licences, permits and authorisations required to be held by it to perform its obligations under this Agreement.

#### 3.2. **Obligations of Client**

During the period of this Agreement, the Client shall perform the following obligations:

- (a) Provide to the Supplier all relevant Client Member information which is necessary for the Supplier to identify the Client's Member in order to deliver and manage the Program in accordance with this Agreement.
- (b) The Client shall ensure that:
  - (i) the Program Terms and Conditions are incorporated within the terms and conditions with their Client Members as part of the supply of the Program; and
  - (ii) the Client Members comply at all times with the Program Terms and Conditions.
- (c) The Client indemnifies the Supplier, for any loss, damage, claim, fees, chargeback, demand and expense suffered or incurred by the Supplier as a result of a breach of the Program Terms and Conditions by a Client Member, and for any misuse, misconduct and

fraudulent activity on the part of the Client and or any Client Member, in relation to the Program.

- (d) The Client indemnifies the Supplier for any loss, damage, claim, or expense suffered or incurred by the Supplier arising or in relation to a breach of the Intellectual Property Rights of the Supplier, Supplier's Retail Partners, or any third party.
- (e) The Client must seek written approval and signoff, which shall not be unreasonably withheld or delayed by Supplier, for any use of Supplier's or Supplier's Retail Partner logos, trade marks, offers or marketing material when used in relation to the Program.
- (f) The Client shall be liable to the Supplier for any breaches of the terms of this Agreement by any of the Client's Members, personnel or contractors.

#### 4. **TERM**

- 4.1 This Agreement commences on the date that it is signed by the parties ("**Effective Date**") and shall continue until expiry or termination in accordance with the terms of this Agreement.
- 4.2 The Client agrees that the Supplier is the exclusive provider of a Loyalty, Rewards, Membership and Payments Software Platform for the Client and the Client Members for the Term of the Agreement, and for a period of 12 months after the expiration or termination of this Agreement.

#### 5. **FEES AND PAYMENTS**

- 5.1 The Client agrees to pay the Fees and any outstanding monies by Direct Bank Deposit within seven (7) days from the date of invoice supplied by the Supplier.
- 5.2 The Client acknowledges and agrees that any mailing costs, card transaction costs or card processing fees associated with delivering Store Cards or Products from Supplier to Client or Client Members, shall be borne by Client and or Members, and stipulated to Client Members at time of online checkout from the Program website or application or upon receipt of an issued invoice by the Supplier.
- 5.3 The Supplier has the right to temporarily disable or suspend the Program if the Client fails to pay any Fees or settle any outstanding monies that are owed to the Supplier in accordance with this Agreement.
- 5.4 Client specific technical requirements that fall outside the Program may be supplied by the Supplier for additional fees, once scoped and agreed upon by the parties.
- 5.5 The Supplier may set off Rebates against Fees payable by the Client at the Suppliers sole discretion.

#### 6. **INTELLECTUAL PROPERTY**

- 6.1 Supplier shall own or be the licensor of the Intellectual Property Rights comprised in or relating to the Program including but not limited to the Program, the Documentation and any proprietary materials supplied.
- 6.2 The Supplier indemnifies the Client in respect of any breach of copyright or trade mark of any third party that gives rise to a claim against the Client provided that:
  - (a) the Client notifies the Supplier within five (5) Business Days of such breach;
  - (b) the Client provides all reasonable assistance to the Supplier in the defence or settlement of the claim; and
  - (c) the Client or Client Members have not in any way caused or contributed to such breach.

- 6.3 The Supplier owns all Intellectual Property Rights hereunder including but not limited to any Program developments, software or any other outputs modified or created in the provision of the Program for the Client and Client Members. If necessary, the Client will do all that is required to vest or transfer ownership of such Intellectual Property Rights upon creation to the Supplier including executing, or procuring execution of, such assignment or novation agreements and any other documents as may be reasonably necessary to achieve the objectives of this clause 6.3.
- 6.4 Except as otherwise expressly provided in this Agreement:
- (a) neither party shall use the name, logo, business name, trade mark or any other Intellectual Property Rights of the other party in any manner without its prior written consent;
  - (b) the Client and Client Members will not accrue any right to own or use the Supplier's Intellectual Property Rights as a result of entering into this Agreement.

## **7 WARRANTIES**

- 7.1 Each party warrants to the other that:
- (a) it has full corporate authority or statutory power, as the case may be, and lawful authority, to execute and deliver this Agreement and to perform or cause to be performed its obligations under this Agreement;
  - (b) this Agreement constitutes a full and binding legal obligation upon it;
  - (c) this Agreement does not conflict with, or result in the breach of or default under, any agreement or deed or any writ order or injunction, rule, judgment, law, or regulation to which it is a party or is subject or by which it is bound; and
  - (d) to the best of its knowledge and belief, there are no actions claims proceedings or investigations pending or threatened against it, which may have a material effect upon the subject matter of this Agreement.
- 7.2 The Supplier warrants that the Program supplied will materially comply with the Documentation.
- 7.3 The Client's sole remedy with respect to the breach of any warranties in this clause 7 by the Supplier is that the Supplier will, at its own expense, correct the non-conformance within a commercially reasonable period of time.
- 7.4 The Supplier makes no representations or warranties and shall in no way be liable whatsoever in relation to any third party products, Store Cards or other Rewards supplied to the Client or Client Members under the Program.

## **8. CONFIDENTIALITY**

- 8.1 Each Party must:
- (a) not disclose or use any Confidential Information received from the other Party pursuant to this Agreement except as set out herein;
  - (b) only disclose Confidential Information;
    - (i) to an Authorised Person where the Authorised Person has a need to know and after the Receiving Party has made the Authorised Person fully aware of the confidential nature of the Confidential Information;
    - (ii) with the prior written consent of the Disclosing Party;
    - (iii) as contemplated in this Agreement for the purpose of supply of services or other Intellectual Property Rights by the Supplier; or
    - (iv) as required by law, provided that the Receiving Party must give the Disclosing Party reasonable prior notice of the proposed disclosure.

- 8.2 The confidentiality obligations in this clause shall not apply to any information which:
- (a) becomes generally known to the public, other than by reason of any wilful or negligent act or omission of the Receiving Party;
  - (b) is at the time of disclosure, legally in the possession of the Receiving Party without any obligation of confidentiality; or
  - (c) is required to be disclosed pursuant to any applicable court, governmental orders or other legal requirement or legal process.

9. **PRIVACY**

- 9.1 Each party will meet their respective obligations under the *Privacy Act 1988 (Cth)* ("**Privacy Act**"), as amended, in respect of any Personal Information that is provided to or accessed by the party in connection with the party's performance of the Agreement. In this clause **Personal Information** has the same meaning as that given to it under the Privacy Act.
- 9.2 In addition to clause 9.1, the Supplier will manage any Personal Information it receives from the Client in accordance with the Supplier's Privacy Policy set out in Schedule 4 and as amended from time to time.
- 9.3 Each party must also:
- (a) except as required by law, only process, use or disclose Personal Information obtained from the other party in the course of this Agreement as required for the purpose of fulfilling its specific functions, activities and obligations under this Agreement;
  - (b) take reasonable steps to protect the Personal Information obtained from the other party in connection with the Agreement from misuse and loss and from unauthorised access, modification or disclosure; and
  - (c) comply with all reasonable direction of the other party in relation to Personal Information obtained from that other party.
- 9.4 Each party must immediately notify the other party if in relation to Personal Information obtained from that other party: (i) it knows of or suspects unauthorised use or disclosure of such Personal Information; or (ii) it becomes aware of any complaint in respect of such Personal Information.
- 9.5 Each party will provide all reasonable assistance to the other in relation to any complaint, investigation or enquiry relating to the treatment of Personal Information under this Agreement.
- 9.6 Subject to retaining such copies of information as required by law, or in the case of the Supplier for the purpose of the provision of services to Client Members, each party will, upon completion of its obligations under this Agreement and as directed by the other party:
- (a) return to the other party, all copies of the Personal Information or any record of the Personal Information obtained from that party and held in connection with performance of the Agreement; or
  - (b) destroy the Personal Information (and any copies thereof) and any record of the Personal Information obtained from that party and held in connection with performance of the Agreement.

10. **NON SOLICITATION OF PERSONNEL**

- 10.1 During the Term and for a period of 12 months following the termination or expiry of this Agreement, the Client must not:
- (a) directly or indirectly solicit for employment, employ, engage the services or otherwise contract any of the Supplier's personnel who have been engaged to provide the Program or the Services; or

- (b) induce or encourage any of the Supplier's Personnel to end their employment contract, other contractor agreement or other similar contractual relationship with the Supplier.
- 10.2 In the event that the Client breaches clause 10.1 the Client shall be liable to the Supplier for an amount equal to one hundred percent (100%) of the annual base compensation of the Supplier's personnel in his/her new position.

11. **LIABILITY**

- 11.1 Except where the Australian Consumer Law or any other legislation applies to this Agreement and implies any guarantees or warranty in relation to the Program or the performance of the Supplier's obligations under this Agreement which cannot be excluded, the Supplier expressly excludes from this agreement all conditions, warranties and terms which may be implied into this agreement by statute, custom, general law or any applicable international conventions.
- 11.2 Where any consumer guarantees or warranties apply, the Supplier's liability for a breach of consumer guarantee or warranty will be limited, to the extent permitted by law, at the election and discretion of the Supplier, to
- (a) replace any Products; or
  - (b) the resupply of the Program.
- 11.3 Subject to clause 11.1, the Supplier expressly excludes all liability to the Client for Consequential Loss arising out of or in connection with this agreement. Consequential Loss in this clause 11.3 includes (without limitation):
- (a) indirect loss;
  - (b) loss of revenues;
  - (c) loss of reputation;
  - (d) loss of profits;
  - (e) loss of actual or anticipated savings;
  - (f) loss of bargain; or
  - (g) lost opportunities, including opportunities to enter into arrangements with third parties.
- This clause applies even if the Supplier knew or ought to have known that it was possible or foreseeable that such Consequential Loss would be incurred.
- 11.4 Subject to clause 11.1, the maximum liability of the Supplier for any damage, liability, action, claim or loss, however caused (including by the negligence of the Supplier) under or in relation to this agreement or the Supplier's provision of the Program ("**Claim**") is limited to the Fees paid for the Program by the Client for the 12 month period prior to the Claim arising.
- 11.5 The limitations set out in clause 11.4 are an aggregate limit for all claims or such loss, whenever made and however arising.
- 11.6 The Supplier shall have no liability or responsibility for Products, hardware, software or services supplied to the Client or Client Members by Retail Partners or other third parties.



12. **ACKNOWLEDGEMENTS**

The Client acknowledges that:

- (a) to the extent that the Supplier has provided to the Client any representation, description, illustration, specification or judgment in writing, the Client has been provided with an opportunity to independently verify the accuracy of that written representation, description, illustration, specification or judgment;
- (b) it has satisfied itself of the suitability of the Program for the Client's purposes; and
- (c) the Rewards listed in Schedule 2 are governed by the Retail Partners' terms and conditions which are subject to change at Retailer Partners' sole discretion.

13. **SUSPENSION AND TERMINATION**

- 13.1 Supplier may at its discretion, suspend the Program in the case of a breach of any term of this Agreement by the Client, and or a breach of the Program Terms and Conditions by the Client or a Client Member, and such suspension may be for the period of such breach. This suspension in no way ceases any obligation of the Client under this Agreement.
- 13.2 A Party may terminate this Agreement immediately by notice in writing to the other Party upon the occurrence of any of the following events ("**Termination Event**"):
  - (a) any material breach by a party of its obligations under this Agreement and failure by such party to remedy the breach within thirty (30) days of date of notice of breach issued by the non-defaulting party;
  - (b) breach by a Client Member of the Program Terms and Conditions, unless such breach is remedied by the Client and/or the Client Member within thirty (30) days of receipt of a notice of breach by the Supplier; or
  - (c) Insolvency of the other party.
- 13.3 On any termination of this Agreement by any party, both parties agree to co-operate in winding down the Program and the measures put in place pursuant to this Agreement. For the avoidance of doubt, Supplier agrees that notwithstanding any termination of this Agreement, Supplier must continue to provide to Client or any Client's Member, the Program, until the term of the respective Client's Member membership expires, for a maximum of 12 months, unless the reason for termination is subject to the Client's or a Client Member's breach under clause 13.2.
- 13.4 Upon termination of this Agreement, the Parties are released from any further obligation to continue to perform this Agreement, except for the following clauses which shall survive termination:
  - (a) those obligations of the Client specified in sub-clauses 2.1(a) through (i) inclusive, clauses 2.2, sub-clauses 3.2(c), (d) and (f) of the Agreement; and
  - (b) clauses 5, 6, 8, 9, 10, 11, 12, 13 and 16 of the Agreement.

14. **DISPUTE RESOLUTION**

- 14.1 If a dispute arises out of or relates to this agreement, except where the party seeks urgent interim, injunctive or interlocutory relief, a party may not commence any court, tribunal or other similar proceedings relating to the dispute unless it has complied with this clause.
- 14.2 If either party believes that a dispute has arisen it must provide a written notice to the other party setting out full details of the dispute ("**Dispute Notice**").
- 14.3 There will be a period of 15 Business Days from the service of a Dispute Notice during which the Client Relationship Manager and the Supplier Relationship Manager must endeavour to resolve the dispute within 10 Business Days of the date of the Dispute Notice.
- 14.4 If, following the expiry of the period specified in clause 14.3, no written agreement has been reached regarding the matters set out in the Dispute Notice, either party may, by written notice to the other party, escalate the dispute to the persons named herein;
- **First Escalation Point** – Senior Manager Level
  - **Second Escalation Point** – Managing Director Level

If an escalation notice is provided under this clause 14.4, there will be a period of 15 Business Days from the service of the notice during which time the parties must participate in good faith negotiations to attempt to reach a written agreement regarding the dispute detailed in the Dispute Notice.

- 14.5 If, following the expiry of the period described in clause 14.4, no written agreement has been reached regarding the matters set out in the Dispute Notice, either party may submit the dispute for mediation pursuant to 14.6.
- 14.6 Any dispute submitted for mediation under this clause 14 will be conducted in accordance with the IAMA Mediation and Conciliation Rules. The terms of the IAMA Mediation and Conciliation Rules are incorporated into this agreement. The parties may agree on the identity of the mediator appointed to mediate a dispute, provided that where the parties are unable to agree on the identity of the mediator within five Business Days of the dispute being submitted for mediation, either party may request that the IAMA appoint a mediator.
- 14.7 If a dispute referred to mediation under clauses 14.5 or 14.6 is not resolved within 30 days after the mediator was appointed or any further time period agreed by the parties in writing, the dispute resolution process under this clause 14 will be terminated and either party may commence legal proceedings in respect of the dispute.

15. **FORCE MAJEURE**

Neither Party shall be liable for any delay in performing or failure to perform its obligations hereunder where such delay or failure is due to any cause or circumstance beyond its control including any natural hazards and/or disasters, acts of God, acts of governmental authorities, governmental regulations, labour unrest, riot, civil commotion, fire, flood, war, acts of foreign enemies and acts of terrorism. The affected Party shall, for the duration of such event, be relieved of any obligation under this Agreement which is affected by such event.

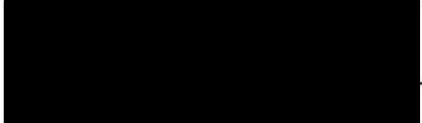
16. **GENERAL**

- 16.1 If a provision of this Agreement is invalid or unenforceable in a jurisdiction:
- (a) it is read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
  - (b) it does not affect the validity or enforceability of: (i) that provision in another jurisdiction; or (ii) the remaining provisions.
- 16.2 A waiver of a provision or of a right arising under this Agreement must be given in writing signed by the party or an authorised officer of the party granting the waiver. Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

- 16.3 A party is not liable for any loss, cost or expense of another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- 16.4 The parties do not intend to create, and this Agreement does not constitute, a partnership, agency, trust or other arrangement and this Agreement is not to be construed as creating a joint venture. Neither party has the authority to act for, or incur any obligation on behalf of, the other party.
- 16.5 This Agreement may be amended only by a written document signed by all parties.
- 16.6 Each party must, at its own expense, whenever requested by another party, promptly do or cause to be done everything reasonably necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.
- 16.7 A party must not assign, create an interest in or deal in any other way with any of its rights under this Agreement without the prior written consent of the other party.
- 16.8 This Agreement represents the entire agreement of the parties about its subject matter and supersedes all other representations, negotiations, arrangements, understandings or agreements and all other communications. No party has entered into this Agreement relying on any representations made by or on behalf of the other party, other than those expressly made in this Agreement.
- 16.9 Both parties agree that despite Supplier best endeavours, that there may be occasions where outside of Supplier control, the web site is partially or fully not operational due to possible system problems, and that Supplier will use all endeavours to restore the system on such occasions as soon as possible. Supplier must give Client prompt notice thereof specifying the issues in reasonable detail with reasonable estimates of when services will be resumed in full.
- 16.10 This Agreement is governed by and is to be construed under the laws of Victoria, and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the State of Victoria and waives any claim or objection based on absence of jurisdiction or inconvenient forum.
- 16.11 Words and expressions which are not defined in this document but which have a defined meaning in the A New Tax System (Product and Services Tax) Act 1999 (Cth) and other similar or related act, regulations, or rulings (GST Laws) have the same meaning as in the GST Laws. Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under these terms are exclusive of GST. If a supply made pursuant to this document is a taxable supply, the recipient must pay on demand to the supplier any GST payable on that supply in addition to any other amount that may be payable by the recipient to the supplier for that supply pursuant to this document, provided that the supplier provides to the recipient a valid tax invoice in the form prescribed by the GST Laws.
- 16.12 In addition to any other means of giving notice, any notice will be taken to have been given if it is in writing and signed by or on behalf of the party giving the notice and either delivered or sent by ordinary pre-paid post to the other party at the address set out in this document or such other address as the other party may have advised in writing, or by facsimile or email transmission sent to the relevant facsimile number or email address (as the case may be) as the other party may have advised in writing. A notice will be taken to have been given at the time of delivery or on the second business Day following the date of posting (whether actually received or not). If service is effected by facsimile, service is deemed to have occurred at the time of transmission provided that the sender's machine produces a transmission report confirming the successful transmission of the total number of pages of the notice. If sent by email, if it is received by the recipient's email server before 5.00pm on a business day, at the time of delivery, or otherwise at 9.00am on the next following business day.

Executed as an Agreement:

EXECUTED by Supplier by its duly  
authorised representative:

 \_\_\_\_\_

Brand & Strategy Mgr  
Office held

MARY GREGOV  
Name of authorised person (print)

31.7.19  
Date

EXECUTED by Client by its duly  
authorised representative:

 \_\_\_\_\_

CEO  
Office held

MATTHEW BANNING  
Name of authorised person (print)

24.7.19  
Date

## SCHEDULE 1 – PROGRAM PARTICULARS

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1. Program Commencement Date: 6 – 8 weeks from signing

2. Term: 36 months

This begins from the Program Commencement Date.

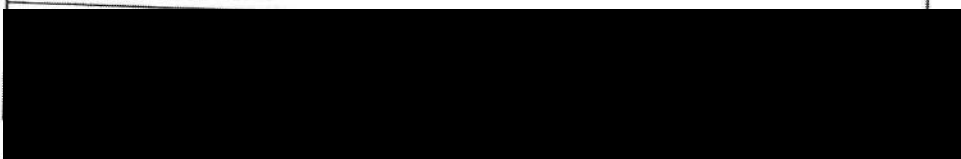
3. Rewards Platform

(a) Rewards Platform Fee: 

This is the minimum Client Member commitment per annum, multiplied by the applicable Rewards Program Fee set out in the Sliding Scale Table below;

- The initial Rewards Program Fee for the first year of the Program will be payable as follows:
  - 50% on the Effective Date, and
  - 50% prior to the Program Commencement Date.
- The Rewards Program Fee for subsequent years is charged per Client Member per Annum, payable at the start of each 12 month period during the Term, or when access is granted to Client Members throughout the Term, above the minimum Client Member commitment level, and based on the Sliding Scale Table below.
- Any additional or newly appointed members throughout the Term will be charged the annual Fee at the end of the month that access is activated.
- Membership access will be transferable immediately if a Client Member becomes inactive and ceases to qualify for membership, during each 12 month Term.
- All Fees are exclusive of GST, hence will attract the relevant GST charge at billing.

### SLIDING SCALE TABLE



(b) Rewards Platform Inclusions:

- Branded, web based platform
- eCards
- Gift Cards
- Live analytics and reporting via Admin Dash
- Community Hub module
- SSO integration into existing Westfund member portal
- Account Manager for operational support
- Branded email address for user support (Australian based, and supported during AEST business hours, 9am to 5pm Mon – Fri)

## **SCHEDULE 2 – REWARDS & PRODUCTS**

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Individual Retail Partners and offers are subject to change at Retail Partner sole discretion.  
Final list of retailers to be confirmed by client.

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## SCHEDULE 3 - PROGRAM TERMS AND CONDITIONS

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### Definitions

- (a) "ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act;
- (b) "Business" means Retail Partners, retailers or businesses offering Services via the Program.
- (c) "Consumer" is as defined by the ACL;
- (d) "Gift Card" means the Gift Card provided by the Supplier via the website or by mail on request from You.
- (e) "GST" means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended;
- (f) "Member" means the member, customer or consumer of the Organisation who has been provided with access to use the Program.
- (g) "Organisation" means the party that is making available the Program to its Members.
- (h) "Payment" means all moneys paid for the supply of the Program and Services in Australian Dollars.
- (i) "Program" means the branded Loyalty, Rewards, Membership and Payment Software Platform delivering Services to You.
- (j) "Retail Partner" means the Business or retailer offering Services to You.
- (k) "Services" means the products, discounts and other benefits provided by the Supplier and any participating Business within the Program.
- (l) "Site" means the Program website made available to You in accordance with these Site Terms.
- (m) "Site Terms" means these Program Terms and Conditions.
- (n) "Supplier" means the provider of the Program.
- (o) "You" or "Your" means the Organisation or Member depending on the context used in these Site Terms.

### Site Terms

- (a) The Site is owned and operated by the Supplier.
- (b) Through this Site:
  - (i) You can register as a Member;
  - (ii) You can subscribe for access to the Program; and
  - (iii) You can access the Services, subject to being an eligible Member.
- (c) These Site Terms apply to the use of the Program and the Site, including the use of the Services offered on this Site.
- (d) Any party that is registered to use the Program, and uses the Program whether as a Member or an Organisation, hereby agrees to be bound by these Site Terms.
- (e) If You do not accept these Site Terms, please discontinue using this Site immediately. If You use the Site, You will be deemed to have accepted these Site Terms in their entirety.
- (f) These Site Terms must be read in conjunction with any other applicable policies, terms and conditions governing the use of this Site as advised from time to time.
- (g) The Supplier reserves the right to amend these Site Terms at any time.
- (h) Members' access and use of this Program is permitted by the Organisation, and the Organisation acknowledges and agrees that it is and remains liable to the Supplier for any misuse of the Program (i.e. use of the Program outside the scope of these Program Terms and Conditions), and liable for any misconduct in using the Program (i.e. using the Program in a manner deemed to be fraudulent or unethical by the Supplier).
- (i) Supplier may, at its discretion, suspend access to the Program due to any breach of the Site Terms.
- (j) Supplier may, change or add to this Program, any information or offers including products and services contained herein at any time.

- (k) While Supplier will use all commercially reasonable efforts to ensure that information on this Program is accurate and up to date. Supplier will not be liable to You and any other third party for any errors displayed within the Program.
- (l) In the event that the Organisation's supply of the Program is terminated, the Supplier may continue to provide access to Services to the Member with the exception of any benefits that would have applied exclusively to the Organisation's branded Program.

#### **Disclaimers and Liabilities**

- (a) Organisation is ultimately liable for any loss, damage, claim, fees, chargeback, demand and expense suffered or incurred by the Supplier as a result of a breach of the Program Terms and Conditions, and for any misuse, misconduct and fraudulent activity by Organisation and/or its Members.
- (b) Supplier will not be liable for any damage to or any viruses which may affect, your computer on account of your access to this Program.
- (c) Supplier is not liable if interference with or damage to your computer systems occurs in connection with the use of this Program or linked websites.
- (d) You may not use this Program to collect or harvest personal information including Internet addresses about Businesses participating in the Program.
- (e) You may not purchase Services through this Program with the intention of on selling them or for generating profit for yourself, or for any other third party.
- (f) Supplier will be under no liability whatsoever to the Organisation or its Members in respect of any loss or damage which may be suffered or incurred due to misuse, misconduct or fraudulent activity, or which may arise directly or indirectly in respect of the Services supplied pursuant to this agreement or in respect of any failure or omission on part of the Supplier.
- (g) To the extent permitted by law, no warranty condition, description or representation by Supplier is given or implied or has been given or implied, and any statutory or other warranty condition, description or representation is hereby excluded.

#### **Warranties**

- (a) Supplier does not warrant that any information or Service provided or referenced by this Program is either merchantable or accurate, that such information or service will fulfil any of your particular purposes or needs, or that such information or service does not infringe on any third party rights.
- (b) While Supplier uses commercially reasonable efforts to include accurate and up-to-date information on the Program, Supplier makes no warranties or representations as to its accuracy.
- (c) Supplier may periodically add, change, remove or improve any of the information, products, Services, Programs and technology described in the Program at the Supplier's discretion.
- (d) Supplier assumes no liability or responsibility for any errors or omissions in the content of the Program.

#### **Third Parties**

- (a) Supplier will not be liable for any mistake, failure or negligent action on the part of any Business providing Services in the Program.
- (b) Members acknowledge and agree that any provision of Services in the Program are at their own risk.
- (c) Businesses providing Services in the Program reserve the right to change, modify or cancel any offers at their discretion.
- (d) Supplier will not be liable for any direct, indirect, incidental, consequential or punitive damages arising out of access to, or use of, the Program.



- (e) Under no circumstances will Supplier be liable for any incidental, special or consequential damages, loss of business, or loss of profits arising in relation to use of the Program, website materials or linked materials.
- (f) In maintaining and operating this Program, Supplier relies upon information provided by third parties. Supplier cannot provide a guarantee against loss, liability, damage and expense if the Site Terms offered are not met.

#### **Termination and Suspension**

- (a) An agreement commences on the date that Site access is granted to You and shall continue until terminated in accordance with its terms.
- (b) Supplier may at its discretion, suspend or terminate access to the Program in the case of a breach of any Site Terms, without notice.

#### **Electronic Listings and Advertisements**

- (a) Supplier does not accept responsibility for the accuracy, error or omission in any Services or advertisements published within the Program, and disclaims all liability to the Organisation or Members for any loss or damage arising from such inaccuracy, error or omission.
- (b) Each Business providing Services in the Program that lists the Services offered on this Site shall own the copyright of the listing or the advertisement.
- (c) The linked websites on this Program are provided for convenience only and may not remain current or be maintained. Links to third party websites should not be construed as any endorsement, approval, recommendation, or preference by Supplier, of those third party sites, and of any information, products or services referred to on those sites.

#### **Trade Marks**

Other products and company names mentioned in this Program may be the trade marks of other third parties, people or entities. Nothing in these Site Terms transfers any right title or interest in any trade marks to the Organisation.

#### **Personal Information**

- (a) When transacting with You, Supplier may ask You for Your name, email, mobile number, membership information, and any other relevant information required to accurately identify You.
- (b) Supplier will handle all personal information provided by You in accordance with Supplier's Privacy Policy.
- (c) All parties are bound to comply with all relevant company and consumer privacy laws and regulations, including the National Privacy Principles and Information Privacy Principles made under the Privacy Act 1988 (Commonwealth).

#### **Delivery**

Supplier cannot take responsibility for any Services, Gift Cards, Vouchers or Tickets that are misplaced, lost or stolen when being sent through Australia Post. On ordering, we offer all Members the option of Registered Post at a fee displayed during the time of checkout, which guarantees that Australia Post will be held liable for all Services that are misplaced or lost when sent via this method.

For products purchased throughout the eStore please note that that standard delivery is 5 - 15 business days, subject to stock levels. Parcels will require a signature upon delivery. Deliveries cannot be made to a PO Box. Deliveries may not be made to gated communities. If you see that your item has been damaged in transit, or upon arrival please refuse delivery so that items may be returned to us immediately. If your item is faulty please contact us directly for assistance. Please chose your purchases with care as we are unable to

accept returns due to change of mind. Items can only be returned in circumstances where an item is damaged or faulty. If a return is required, please ensure you notify us within 14 days of receipt of your item. When you choose to pay by Direct Deposit, your items will be shipped once payment has been cleared, which can take up to 3 business days. We recommend that payment be made as soon as possible to avoid any delays in shipping. If payment is not received within 14 days, your order will be cancelled. Please remember to use your order number as your payment reference.

### **Governance**

This Program shall be governed by and construed in accordance with the laws of the State of Victoria, and the parties irrevocably submit to the jurisdiction of any Court of that State.

### **Payments, Refunds & Chargebacks**

- (a) You agree to pay for Services within the Program in Australian Dollars.
- (b) Payment can be made by credit/debit card and Direct Deposit, or other payment options made available to You by Supplier. Once payment has been cleared, we will distribute the Services you have purchased. You confirm that the credit/debit card that is being used is Yours. All credit/debit card holders are subject to validation checks and authorisation by the card issuer and the Supplier. If the issuer of your credit card refuses to authorise payment for products within our Program, we will not be liable for any delay or non-delivery of Services.
- (c) Expiration of any Services including but not limited to gift cards and vouchers may vary depending on the requirements of the participating Business and Service providers.
- (d) All digital or physical vouchers sold via this Program are restricted by the terms and conditions of each individual Business, and should be found in the terms & conditions of the individual Business. All digital gift cards and vouchers are non-refundable, as they are to be treated as cash. Gift cards and vouchers are valid until the expiry date indicated and cannot be exchanged or replaced. Vouchers are sold for the personal use of Members only. Vouchers or gift cards are not to be re-sold and cannot be re-distributed.
- (e) Supplier will only process card transactions that have been authorized by the applicable card issuer, and does not guarantee or assume any liability for transactions authorized and completed which may later be reversed or charged back. You are responsible for all reversed or charged back transactions, regardless of the reason for, or timing of, the reversal or chargeback. Supplier may add or remove one or more payment methods at any time.
- (f) If a chargeback occurs, we will use commercially reasonable efforts to assist the Organisation and the Member to resolve the dispute, however once the chargeback is finalised, we will automatically debit the Organisations account for the chargeback amount in addition to a chargeback fee of [REDACTED] and provide the relevant information to the Organisation so they can resolve the dispute with their Member.

### **Contact**

For any notice to be given in writing, or to get in touch with us, please email [contact@loyalty.support](mailto:contact@loyalty.support)

## SCHEDULE 4 – PRIVACY POLICY

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As the supplier of the Program, we recognise the importance of your privacy and understand your concerns about the security of the personal information you provide to us.

In the course of doing business with you, the collection of personal information in some instances is necessary or unavoidable. We are committed to protecting the privacy of all personal information that we collect and ensuring that your personal information is handled correctly.

All personal information collected by us will be treated in accordance with the Australian Privacy Principles ("APPs") as contained in the *Privacy Act 1988* (Cth). The APPs detail how personal information may be collected, used, disclosed, stored and destroyed, and how an individual may gain access to or make complaints about the personal information held about them.

This policy details the type of personal information we collect from our customers, how we manage personal information about you, with whom we may share it and the choices available to you regarding our use of the information. We also describe the measures we take to safeguard your personal information and tell you how to contact us regarding our privacy practices.

### **What types of personal information do we collect and hold**

"Personal information" is information or an opinion about an identified individual, or about an individual who is reasonably identifiable, whether true or not, and whether recorded in a material form or now. Information where we have removed any reference to a person, so that the person cannot be reasonably identifiable from the information, is not personal information.

The kinds of personal information that we may collect and hold from you or about you include:

- contact information, such as your name, postal address, e-mail address and telephone number;
- date of birth and gender;
- account information such as username, password and transaction history;
- bank account details;
- information concerning your interests, buying habits and product preferences; and
- any other personal information submitted to us by you.

We do not collect sensitive information (such as relating to your ethnic origin, religious or philosophical beliefs, membership of a political or trade association, sexual preferences or health), and would not do so without your consent.

### **Website**

When you browse our website or contact us electronically, we may record geographical tagging, cookies and statistical data. This may include your IP address, date and time of your visit, operating system, language preferences, device characteristics, pages visited, information downloaded and type of browser used to access the website.

We use this information to help us to make decisions about maintaining and improving our website and online services.

While our website may contain links to other websites with the exception of our related entities, those websites are not subject to our privacy standards, policies and procedures. We recommend that you make your own enquires as to the privacy policies of these third parties and we are in no way responsible for the privacy practices of these third parties.

### **How we collect and hold personal information**

We aim to collect personal information only directly from you, unless it is unreasonable or impracticable for us to do so. For example, we collect personal information from you or about you from information you submit to us when:

- you apply for or request a product or service;