



Swinburne Student Association Club Declaration of Use 'Weel' Debit Card Agreement

NAME OF CLUB EXECUTIVE MEMBER

CLUB

registered under Swinburne Student Association Limited ACN 682 527 448, H76 Ground Floor, GS Building, 34 Wakefield St Hawthorn VIC 3122.

DECLARATION OF USE AGREEMENT

The Declaration of Use 'Weel' Debit Card Agreement ("**Agreement**") outlines the terms and conditions governing the use of the debit card issued by the Swinburne Student Association ("**SSA**") to the cardholder ("**You**") on behalf of an SSA Club. By activating or using the card, you agree to be bound by the terms stated herein.

By signing below, you acknowledge and agree to the following terms and conditions set out in this Agreement.

USING YOUR CLUB DEBIT CARD

You acknowledge and accept the following signed undertakings in connection with the provision and use of a Club 'Weel' debit card:

- That you will use the Weel Card in accordance with the Weel [terms and conditions](#);
- That you are the Treasurer of the Club (or the President where no Treasurer exists, or, a Club Executive Member) and your right to use the Debit card is connected with your Club position and is voided upon vacating office (or unless otherwise revoked, whichever occurs soonest);
- That you will use the Weel debit card to make purchases in accordance with SSAF Guidelines;
- That you will only transact for approved purchases advised by the Clubs and Sports team in accordance with our Clubs and Sports Policies and Procedures;
- That you will not provide the card to any unauthorised cardholder to make transactions;
- That you are responsible for the storage and use of the debit card, including the use of the Weel app on your electronic mobile device;
- That the SSA reserves the right to suspend or revoke access at any time for any reason; and
- That failure to produce a tax invoice for the transaction on the card will result in an immediate suspension of use for future transactions until such time as the tax invoice is provided (subject to discretion by Clubs and Sports).

IN CONNECTION WITH UNAUTHORISED TRANSACTIONS

You also commit to the following undertakings in connection with the provision and use of a Club 'Weel' debit card:

- You will report any unauthorised transactions, in writing, on the card within two business days;
- You are responsible for all transactions conducted with your debit card; and
- Fees incurred in connection with card transactions may be deducted from your Club account.

LIMITATION AND LIABILITY

You also acknowledge and accept the following undertakings in connection with the provision of a Club 'Weel' debit card:

- You are responsible for declined transactions that involve insufficient funds, system failures or merchant errors.
- That you may be referred for misconduct and any other breach under Swinburne's Student Charter where you have not used the card in accordance with this Agreement or SSA's Club Policies and Procedures.

Questions and any issues arising in connection with this agreement are to be addressed to the Clubs and Sports Team at clubs@swin.edu.au.

The SSA reserves the right to modify this Agreement at any time, subject to the provision of written notice in accordance with Victorian and National law.

EXECUTION

Signed for and on behalf of Student Club by its authorised representative:

Signature:

Signed for and on behalf of Swinburne Student Association by its authorised representative:

Signature:

Name:

Name:

Club Position:

Title:

Date:

Date:

THE PARTIES AGREE:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context requires otherwise:

“**Account**” means the account associated with your Weel debit card.

“**ATM**” means Automated Teller Machine for cash withdrawals and other transactions.

“**Debit Card**” means the electronic card issued to you that allows access to funds to your Club account.

“**Merchant**” means any business that accepts debit card payments.

“**PIN**” means a personal identification number required for certain transactions.

“**SSA**” means Swinburne Student Association Limited

“**Student Club's Representative**” means the person named in Item 5 of the Agreement Particulars and includes any delegate or representative of the Student Club Representative;

Swinburne Student Association's Representative means the person named in Item 6 of the Agreement Particulars and includes any delegate or representative of the Swinburne Student Association Representative; and

“**Term**” means the period specified in Item 3 of the Agreement Particulars;

1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) the headings are used for convenience only and do not affect the interpretation of this Agreement;
- (b) a reference to a document includes the document as modified from time to time and any document replacing it;
- (c) a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this document, including the Agreement Particulars, all of which are deemed part of this document;
- (d) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (e) where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation';
- (f) if this Agreement requires something to be done on a day which is not a Business Day then that thing must be done by the next Business Day;
- (g) a reference to a person includes a natural person, any body or entity whether incorporated or not, partnership, government authority, any executor, administrator or successor in law of the person;
- (h) a reference to a party includes that party's successors and permitted assigns;
- (i) a reference to a statute or other law includes regulations and other instruments made under it and

includes consolidations, amendments, re-enactments or replacements of any of them;

- (j) a reference to '\$' or 'dollars' is a reference to Australian dollars.

2. INTELLECTUAL PROPERTY RIGHTS

- (a) All Intellectual Property relating to the Event belongs or is licensed to SSA and the Sponsor must not copy, reproduce, distribute, publish or communicate to any third party such information without SSA's prior written consent.
- (b) Each party acknowledges that it will not acquire any rights in the other party's Intellectual Property by virtue of entering into or performing its obligations under this Agreement.
- (c) Each party must notify the other party immediately upon becoming aware of:
 - (i) any actual or suspected infringement of the other party's Intellectual Property; or
 - (ii) any third party claim of infringement of their Intellectual Property from the use of the other party's Intellectual Property.
- (d) If requested, each party must co-operate fully with and provide all reasonable assistance to, the other party in stopping any infringement or defending a claim.

3. CONFIDENTIALITY

- (a) All Confidential Information obtained by one party from the other party in the course of performing this Agreement will be treated as confidential, kept secure and will not be disclosed to any third party without its prior written consent, unless required by law to do so.
- (b) The parties agree to limit the disclosure of the Confidential Information to those of its employees to whom such disclosure is strictly necessary for the purpose of performing its obligations under this Agreement and to ensure that they keep the Confidential Information confidential.

4. LIABILITY AND INDEMNITY

4.1 Indemnity

- (a) Subject to paragraphs (b) and (c), each party (an **indemnitor**) indemnifies and shall keep indemnified the other party (including all or its servants, agents, officers or employees) (**indemnitee**) from and against any and all losses, Claims and liabilities (including reasonable legal fees) that the indemnitee suffers or incurs as a result of:
 - (i) loss of or damage to property, personal injury or death caused by the indemnitor;
 - (ii) any breach of this Agreement by the indemnitor;
 - (iii) infringement of Intellectual Property by the indemnitor; or
 - (iv) any unlawful or negligent act or omission by the indemnitor.
- (b) The indemnity given by the indemnitor will be reduced proportionately to the extent that a breach of this Agreement or any unlawful or negligent act or omission by the indemnitee may have contributed to

any such liability, loss, harm, damage, cost or expense.

- (c) Notwithstanding any provision of this Agreement, in no event shall a party have any liability whatsoever to another party (or anyone claiming through another party including their agents, consultants, employees or representatives) for any loss of profits, revenue, business, opportunity, production, goodwill, contract, data or anticipated saving or for any financing costs or increase in operating costs or for any economic loss for any special, indirect or consequential loss or for exemplary damages arising out of or in connection with this Agreement.

4.2 Limitation of liability

Except as expressly provided to the contrary in this Agreement and to the fullest extent permitted by the law:

- (a) all terms, conditions, warranties or representations, whether express, implied, statutory or otherwise relating to the supply of the Benefits are excluded;
- (b) SSA's liability for any loss or damage suffered by the cardholder or any other person for any damage to property, personal injury or death is in every case limited to the Card and
- (c) SSA will not be liable for any delay or failure to provide the Benefits if the delay is due to Force Majeure or something the Sponsor does or fails to do.

4.3 Where liability cannot be limited

Certain laws such as the *Competition and Consumer Act 2010* (Cth) may imply warranties or conditions or impose obligations upon SSA that SSA cannot exclude, restrict or modify. If these laws apply, to the extent to which SSA is able to do so, SSA's liability will be limited (at SSA's option) to:

- (a) the resupply of the Benefits; or
- (b) the payment of the cost of resupplying the Benefits.

5. COMPLIANCE WITH LAW

The Sponsor must comply with, and must ensure that its officers, employees, agents and subcontractors comply with, all laws and policies which are published or which are disclosed to the Sponsor, affecting this Agreement and the manner in which the Sponsor performs its obligations under this Agreement.

6. GST

6.1 GST Act

In this clause words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as their definition in that Act.

6.2 Exclusive of GST

Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

6.3 Recipient must pay

If GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 6.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

6.4 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 6.3.

7. DISPUTE RESOLUTION

7.1 Dispute

- (a) Neither party will resort to legal proceedings, or terminate this Agreement, until the following process has been exhausted, except if it is necessary to seek urgent interlocutory relief.
- (b) If a Dispute arises about the operation of this Agreement, that party must promptly send a notice to the other party ("**Dispute Notice**") setting out a full description of the Dispute.
- (c) Within the 10 Business Days after the Dispute Notice is given, Swinburne Student Association's Representative and the Club Representative must meet at a time and place agreed between the parties and use reasonable commercial efforts to resolve the Dispute in good faith.
- (d) If resolution of the dispute cannot be achieved under clause 7.1(c), the dispute must then be escalated to the CEO, who must attempt to resolve the dispute in good faith.

7.2 Mediation

- (a) Should the parties fail to reach a solution in accordance with **clause 7.17.1(d)** within 5 Business Days (or such other time frame agreed between the parties), the parties may agree to mediation.
- (b) The mediator will be selected in accordance with the Commercial Mediation Guidelines issued by the Australian Commercial Dispute Centre Limited.

8. TERMINATION

8.1 Cancellation

- (a) The SSA may terminate this Agreement at any time.
- (b) If the Agreement is terminated, SSA must be provided with confirmation by the Cardholder that they will no longer use the provided card and renounce all rights to transactions from the date of written notice of termination.

8.2 Termination Notice

Each party may terminate this Agreement at any time by 7 days' written notice to the other Party if the other Party ("**Defaulting Party**"):

- (a) fails to carry out any provision of this Agreement and that the Defaulting Party does not remedy that failure within 10 Business Days after written notice to the Defaulting Party requiring it to be remedied;
- (b) fails to carry out any provision of this Agreement and the failure is not capable of remedy;
- (c) ceases to carry on business in the normal course.

8.3 Immediate Termination

SSA may immediately terminate this Agreement at any time by written notice to the Cardholder where:

- (a) in the opinion of SSA the name, goodwill, reputation or interest of SSA is at risk; or

- (b) For any other reason deemed necessary by SSA.

8.4 Consequences of Termination

- (a) Unless agreed otherwise by the parties, on expiration or termination of this Agreement, each party:
- (i) will cease to have any rights to use the other party's Intellectual Property;
 - (ii) must immediately cease to use, publish or distribute the other party's Intellectual Property, hold itself out as being entitled to use or reproduce the other party's Intellectual Property, or suggest, in any way, a relationship between SSA and the Cardholder;
 - (iii) must in the manner and within the timeframe required by the other party destroy all material on which the other party's trade mark appears or which in any way may suggest a relationship between SSA and the Cardholder;
- (b) Termination of this Agreement does not affect:
- (i) a party's rights or claims which arose before termination; or
 - (ii) unless agreed otherwise by the parties, any rights or claims made under clauses¹ (use of Marks), 2 (Intellectual Property Rights), 3 (Confidentiality), (Warranties) and 7 (Dispute Resolution) (to the extent that these obligations are applicable to them) and any other obligations which by their nature are intended to survive this Agreement.
- (c) Termination of this Agreement does not prejudice any cause of action or claim of any party arising out of a breach of this Agreement by the other party.

8.5 The Cardholder's obligations on Termination

On termination of this Agreement, the Cardholder must return to SSA all property of SSA including, but not limited to, Confidential Information and confirmation of termination of the Debit Card issued.

The Cardholder also loses immediate rights of access to the card on the day written notice is provided.

9. FORCE MAJEURE

- (a) If a party is unable to perform an obligation under this Agreement due to Force Majeure, that party is excused from performing that obligation while those circumstances continue.
- (b) If those circumstances continue for 60 days or if the delay in the party's performance of its obligation has a material adverse effect on the other party, then the party adversely affected may terminate this Agreement upon giving 14 days' written notice to the other party.

10. NOTICES

10.1 Service of Notice

A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:

- (a) personally on the person;
- (b) by leaving it at the person's current address for service;

- (c) by posting it by prepaid post addressed to that person at the person's current address for service;
- (d) by facsimile to the person's current number for service; or
- (e) by email to the person's email address for service.

10.2 Time of Service

A notice or other communication is deemed served:

- (a) if served personally or left at the person's address, upon service;
- (b) if posted within Australia to an Australian address, 2 Business Days after posting and in any other case, 7 Business Days after posting;
- (c) if served by facsimile, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- (d) if served by email, at the time the notice or other communication comes to the attention of the addressee;
- (e) if served by email, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient;
- (f) if received after 5.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

11. RELATIONSHIP OF THE PARTIES

This Agreement does not create a partnership, joint venture, employment or agency relationship between the parties. Each party must not incur any expenditure on behalf of any other party, pledge its credit, or bind it to any contractual obligation whatsoever without prior written approval signed by the other party.

12. GENERAL

12.1 Entire Agreement

This Agreement contains the entire agreement between the parties and supersedes all prior communications, representations, warranties and undertakings between the parties concerning the subject matter of this Agreement.

12.2 No Variation

This Agreement cannot be varied except in writing signed by the parties.

12.3 Severability

If any provision in this Agreement is unenforceable, illegal or void or makes this Agreement or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Agreement remains in force.

12.4 Further assurance

Each party must promptly at its own cost do all things (including executing and if necessary delivery all documents) necessary or desirable to give full effect to this Agreement.

12.5 Waiver and Exercise of Rights

- (a) A single or partial exercise or waiver of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (b) No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

12.6 Legal Costs and Expenses

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this document and other documents referred to in it, unless expressly stated otherwise.

12.7 Survival of Indemnities

Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this document.

12.8 Enforcement of Indemnities

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this document.

12.9 No Merger

The Warranties, undertakings, agreements and continuing obligations in this document do not merge on completion.

12.10 Rule of Construction

In the interpretation of this document, no rule of construction applies to the disadvantage of the party preparing this document on the basis that it prepared or put forward this document or any part of it.

12.11 Execution of counterparts

This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

12.12 Governing Law

This Agreement is governed by and construed in accordance with the laws of the State of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.