

# Summary of changes to the Merchant Agreement for CommBank Merchant Facilities

Effective **25 October 2020**, CommBank is updating the Merchant Agreement for CommBank Merchant Facilities.

What are these changes?

## Part 2: How to use your Facility

### 2.7 If the system is down

Update	Clause 2.7.2 addition of a sentence which states: <i>"In more serious instances it may lead to Card Scheme penalties or the termination of this Agreement."</i>
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## Part 3: Terms & conditions

### 3.3 Processing Transactions

Update	<p>Clause 3.3.3 replaced existing content with the paragraph below:</p> <p><i>"If you choose to surcharge for Transactions, it is your responsibility to ensure your surcharges are not excessive. You should review and as appropriate, adjust your rates of surcharge regularly, but at least every year. To assist you, we provide details of your average cost of acceptance for each Card Scheme in your merchant statements. You will also receive an annual merchant statement in July each year.</i></p> <p><i>If you choose to surcharge, you must also: Clearly and prominently display the surcharge before processing a Transaction so as to allow a Cardholder to choose another payment method if they desire; and</i></p> <p><i>Refund any surcharge when refunding a Transaction (this may require pro-rating the refund of a surcharge for partially refunded Transactions).</i></p> <p><i>There may be regulatory consequences for excessive surcharging. For more information visit the Payments Surcharges page at <a href="http://acc.gov.au">acc.gov.au</a>."</i></p>
Update	<p>Clause 3.3.7.1 replaced existing content with the paragraph below:</p> <p><i>"Cash out is only available on selected Cards. If you choose to provide Cardholders with cash out or cash with a purchase, the Cardholder must choose the 'Cheque' or 'Savings' option rather than 'Credit' Where a Cash out transactions is via a digital wallet (i.e. Google, Apple, Samsung Pay), the Cardholder is not required to select 'Cheque' or 'Savings'.. Cash must only be provided directly to the Cardholder in the form of Australian legal tender (notes and coins).</i></p> <p><i>You must not give cash out on credit cards, where the 'Credit' option is selected."</i></p>

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## 3.5 Settlement & payment

Update	<p>Clause 3.5.3 addition of a second paragraph which states:</p> <p><i>“If you choose to receive merchant statements electronically through CommBiz, merchant statements will be taken to have been issued by us when they are available to “Users” (as defined in the “CommBiz Terms and Conditions”) in a manner consistent with those terms and conditions. This may mean that no email notification is provided when the merchant statement is available.”</i></p>
Update	<p>Clause 3.5.9 replaced existing content with the paragraph below:</p> <p><i>“If you receive Payments for goods or services prior to their delivery or provision, there is an increased risk that we will need to process a chargeback without Your Account having sufficient funds to cover that chargeback. Because of this increased risk we may (acting reasonably) require you to do one or more of the following at any time:</i></p> <ul style="list-style-type: none"><li><i>• provide information about any Payments received where the goods or services are provided at a later time;</i></li><li><i>• provide information on your Transaction profile;</i></li><li><i>• provide information for our credit assessment purposes, including periodic credit reviews;</i></li><li><i>• maintain Your Account for the settlement of Transactions with us;</i></li><li><i>• provide security (including any additional security) to us to cover any chargebacks and amounts owed by you.</i></li></ul> <p><i>You must notify us if there is any change to your business that could increase the:</i></p> <ul style="list-style-type: none"><li><i>• amount of sales that are not fulfilled at the time of the Payment transaction; or</i></li><li><i>• period between date of Payment transaction and delivery or provision of the related goods or services.</i></li></ul> <p><i>The requirements contained in this clause 3.5.9 are material terms of this Agreement.”</i></p>

## 3.8 Changing or terminating this Agreement

Update	<p>Clause 3.8.5 addition of a third bullet points which states:</p> <p><i>“may retain all or part of any security provided to us for as long as we reasonably require to secure any of your obligations under this Agreement. If you request, and we agree, we may substitute the security for another form of security deemed acceptable by us;”</i></p>
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## 3.9 Miscellaneous

Update	<p>Clause 3.9.4 updates to the first paragraph which now states:</p> <p><i>“The Banking Code of Practice applies to your Facility if you are a small business (as defined in the Code) or an individual.”</i></p>
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## Part 4: Optional products and features

### 4.1 About this part

Update	Replaced reference to 'Merchant Choice Routing' in the sixth bullet point to 'Least Cost Routing'.
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### 4.2 MediClear

Restored	Clause 4.2 MediClear has been restored (removed from agreement dated 1 April 2020) and subsequent paragraph numbering adjusted accordingly.
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### 4.3 HealthPoint

Restored	Clause 4.3 HealthPoint has been restored (removed from agreement dated 1 April 2020) and subsequent paragraph numbering adjusted accordingly.
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### 4.4

Update	<p>Clause 4.4.7 Trademarks and copyright replaced existing content with the paragraph below:</p> <p><i>"You acknowledge and agree that: (a) the Card Scheme logos, names and holograms and all intellectual property rights subsisting in those logos, names and holograms belongs to, and is or will be, vested in the respective Card Scheme; and (b) all rights, titles and interests in our trademarks and any intellectual property subsisting in them belongs to and is or will be vested in us and our related bodies corporate; and (c) all goodwill arising from the use of our trademarks, business names, trading styles or get ups pursuant to this agreement is for the benefit of us and is and will remain vested in us and our related bodies corporate.</i></p> <p><i>Use of branding and trademarks</i></p> <p><i>You are granted a sub licence to use the Card Schemes' trademarks, branding and marketing messages (Trademarks), solely for the purposes we specify from time to time, during the term of this Agreement only, on the following terms and conditions: (a). You must not use EPAL's Trademarks in a manner that is inconsistent with or detracts from those Trademarks; and (b) you must comply with any EPAL style guide relating to use of the Trademarks which we provide to you; and (c) upon termination of this Agreement you must immediately cease using the Trademarks and destroy all materials and paraphernalia that include the Trademarks; and (d) you agree that this sub licence does not grant you a proprietary interest in the Trademarks"</i></p>
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## 4.5 eCommerce Value Add Services

Update	<p>Clause 4.5.1 (previously Clause 4.3.1) replaced existing content with the paragraph below:</p> <p><i>“Tokenisation is available on some of our eCommerce products to ensure the secure storage of customer Card data. You may choose to use our tokenisation service or alternatively choose to use Card Scheme tokenisation. Tokenisation allows you to store payment details in exchange for a token. If you choose to use our tokenisation service, we will allocate a token. If you choose to use Card Scheme tokenisation, The Card Scheme or network token will be issued by the Card Scheme. To store Card (excluding UnionPay International) or bank accounts in our tokenisation service you must obtain our approval and if approved, provide us with:</i></p> <ul style="list-style-type: none"><li>• <i>scheme Card particulars;</i></li><li>• <i>scheme debit card particulars;</i></li><li>• <i>charge card particulars; and</i></li><li>• <i>bank account particulars.</i></li></ul> <p><i>“The record provided to us must be in the format approved by us. On receipt of the records, we will allocate an identifying number (token) to the relevant Card, charge card or bank account particulars of each customer identified in such record and retain that record until advised by you or on termination of the merchant Facility. We will make available to you the tokens allocated by us corresponding to each of your customers whose particulars you have supplied to us. By providing us with the token of your customer and instruction to obtain a Payment, you are deemed to have provided us with that customer’s relevant payment particulars.”</i></p>
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## 4.6 Least Cost Routing

Update	Replace all references to ‘Merchant Choice Routing (MCR)’ to ‘Least Cost Routing (LCR)’ and provide information on surcharging when LCR is enabled.
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## 4.7 Third Party POS Integration Software Features

Addition	<p>Addition of Clause 4.7 Third Party POS Integration Software Features which states:</p> <p><i>“We work with third party POS Integration software providers to enable features such as surcharging, enhanced tipping, pay at table and split bill, on your compatible CBA terminal. These features are enabled by your POS software provider and integrated into the POS software. You need to ensure that the feature is compatible and supported by your third party POS integration software. We are not responsible for any losses you may incur due to non-performance of these features.”</i></p>
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