

Disclosure of movement of 1% or more in substantial holding  
or change in nature of relevant interest, or both

*Sections 277 and 278, Financial Markets Conduct Act 2013*

**Note:** This form must be completed in accordance with the instructions at the end of the form.

**To NZX**  
and  
**To Smartpay Holdings Limited**

Relevant event being disclosed: Disclosure of issue of Convertible Loan Notes

Date of relevant event: 17 July 2018

Date this disclosure made: 17 July 2018

Date last disclosure made: 12 June 2018

**Substantial product holder(s) giving disclosure**

Full name(s): Anacacia Pty Limited

**Summary of substantial holding**

Class of quoted voting products: **Ordinary Shares**

Summary for **Anacacia Pty Limited**

For **this** disclosure,—

- (a) total number held in class: **11,857,810** (and up to **35,857,810** in total if the maximum number of loan notes issued to Anacacia Pty Limited become convertible and are converted)
- (b) total in class: **171,752,278** (and up to **201,752,278** in total if the maximum number of loan notes on issue by Smartpay Holdings Limited become convertible and are converted)
- (c) total percentage held in class: **6.90%** (and up to **17.77%** in total if the maximum number of loan notes on issue by Smartpay Holdings Limited, including those held by Anacacia Pty Limited, become convertible and are converted).

For **last** disclosure,—

- (a) total number held in class: **10,935,217**
- (b) total in class: **171,752,278**
- (c) total percentage held in class: **6.4%**

**Details of transactions and events giving rise to relevant event**

Details of the transactions or other events requiring disclosure: **Issue of Convertible Loan Notes and on market purchases of ordinary shares since 12 June 2018.**

**Additional information**

Address(es) of substantial product holder(s): Level 2, 53 Cross St, Double Bay, NSW 2028

Contact details: **Tom Granger**

**Certification**

I, **Tom Granger**, certify that, to the best of my knowledge and belief, the information contained in this disclosure is correct and that I am duly authorised to make this disclosure by all persons for whom it is made.



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**SMARTPAY HOLDINGS LIMITED**

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**Anacacia Pty Ltd ATF The Wattle Fund**

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**SUBSCRIPTION DEED**

**FOR CONVERTIBLE NOTES IN SMARTPAY HOLDINGS LIMITED**

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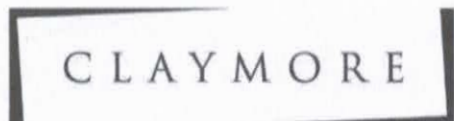
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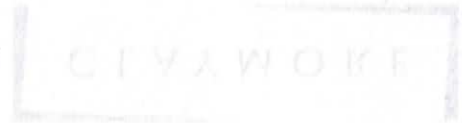
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**PARTIES**

1. **SMARTPAY HOLDINGS LIMITED**, of 205 Wairau Road, Glenfield, Auckland ("Smartpay")
2. **The person named as the subscriber in Schedule 1** ("Subscriber").

**BACKGROUND**

- A. Smartpay is a company incorporated in New Zealand under number 304625. The ordinary shares in Smartpay are admitted to listing and trading on the NZX and ASX.
- B. Smartpay intends to issue up to 15 convertible notes at AUD\$500,000 per convertible note in order to raise additional funds of up to AUD\$7,500,000 ("the Transaction").
- C. The Subscriber has agreed to subscribe for convertible note(s) in Smartpay on the terms and conditions set out in this Deed.

**IT IS AGREED**

1. **Definitions and Interpretation**

1.1 In this Deed, unless the context otherwise requires:

"**ASX**" means ASX Limited (ACN 008 624 691) and, where the context permits, the Australian Securities Exchange operated by ASX Limited;

"**ASX Listing Rules**" means the official listing rules of ASX as amended from time to time;

"**Bank**" means the primary secured debt funder to Smartpay and its subsidiaries (being ASB Bank Limited as at the date of this Deed);

"**Board**" means the board of directors of Smartpay;

"**Bond Moneys**" means all amounts owing from time to time by Smartpay to any Holder under this Deed or otherwise in connection with the Convertible Notes;

"**Business Day**" means a day (other than Saturday or Sunday) on which registered banks are open for business in both Auckland, New Zealand and Sydney, Australia;

"**Certificate**" has the meaning given to it in clause 5.1;

"**Companies Act**" means the Companies Act 1993;

"**Conditions**" means the terms and conditions of each Convertible Note as set out in Schedule 2;

"**Convertible Note**" means a convertible note issued by Smartpay to the Subscriber under this Deed;

"**Corporations Act**" means the Corporations Act 2001 (*Cth*);

"**Deed**" means this deed including the background and any schedules and appendices attached;

**"Dollars" and "AUD"** means Australian dollars;

**"Extraordinary Resolution"** means a resolution approved in writing by Holders holding not less than three-quarters of the total principal amount of the Convertible Notes under the Transaction which are then in issue (i.e. which have not been redeemed or converted at the relevant time);

**"FMCA"** means the Financial Markets Conduct Act 2013 (*New Zealand*);

**"Holder"** means the registered holder of a Convertible Note;

**"Issue Date"** means, in relation to each Convertible Note, the date on which that Convertible Note is issued by Smartpay under the terms of this Deed;

**"Liquidation"** means, in relation to Smartpay:

- (a) the process of liquidation provided for in Part XVI of the Companies Act; or
- (b) any analogous procedure following which Smartpay will cease to validly exist, or be duly incorporated; or
- (c) Smartpay becoming subject to statutory management under the Corporations (Investigation and Management) Act 1989,

but excludes a reconstruction or amalgamation:

- (d) on terms approved by Extraordinary Resolution of the Holders and the Bank; or
- (e) under Part XIII of the Companies Act where the successor to Smartpay assumes the obligations of Smartpay under this Deed and the Convertible Notes;

**"Liquidator"** means, in relation to Smartpay, any official (including a statutory manager) in whom management of Smartpay may become vested for the purposes of liquidating its assets and repaying its debts and administering to the eventual cessation of its business;

**"Listing Rules"** means the NZX Listing Rules and/or the ASX Listing Rules (as applicable);

**"Month"** means a calendar month;

**"NZX"** means NZX Limited (NZBN 9429037267162) and, where the context permits, the main board equity securities market operated by NZX Limited;

**"NZX Listing Rules"** means the Main Board / Debt Market Listing Rules of NZX as amended from time to time;

**"Principal Amount"** means, in respect of each Convertible Note, \$500,000.00;

**"Register"** has the meaning given to it in clause 6;

**"Senior Creditors"** means persons to whom Senior Indebtedness of Smartpay is owed;

**"Senior Indebtedness"** means all indebtedness (present or future) of Smartpay:

- (a) a claim in respect of which would be admitted in a Liquidation of Smartpay; and
- (b) which is not by its terms expressed to rank in a Liquidation subordinate to, or equally with the Convertible Notes;

**"Settlement Date"** means Monday 16 July 2018 or such other date as the parties may agree;

**"Share"** means a fully paid ordinary share in the capital of Smartpay;

**"Subscribed Convertible Notes"** means the number of Convertible Notes subscribed by the Subscriber under this Deed as stated in Schedule 1;

**"Subscription Amount"** means the amount payable by the Subscriber for the Convertible Notes as stated in Schedule 1; and

**"Transfer Deed"** means a transfer deed in the form included in Schedule 4.

1.2 In the construction of this Deed:

- (a) Except where otherwise expressly provided in this Deed, words defined in the Companies Act have the same meanings in this Deed;
- (b) The introduction to and headings in this Deed are inserted for convenience only and are to be ignored in construing this Deed;
- (c) Unless the context otherwise requires, words denoting the singular number only are to include the plural and vice versa and words denoting any gender are to include all genders;
- (d) References to any legislation or to any provision of any legislation are deemed to be references to that legislation or provision as from time to time amended, re-enacted or substituted;
- (e) References to any document (however described) will include references to such document as modified, novated, supplemented, varied or replaced from time to time;
- (f) Anything which may be done at any time may also be done from time to time;
- (g) Except where expressly provided otherwise, anything which is required by this Deed to be done on (or by) a day which is not a Business Day is to be done on (or by) the next Business Day;
- (h) A reference to any party includes its successors, transferees, and permitted assigns;
- (i) "Person" includes any individual, company, corporation, firm, partnership, shareholder, association, organisation, trust, state or agency of a state in each case whether or not having separate legal personality;
- (j) "tax" includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature and whatever called, imposed or levied by any government or governmental agency; and
- (k) Any reference to "Holders holding a majority of the Convertible Notes" or similar is a reference to Holders holding not less than half of the total Principal Amount of the Notes under the Transaction which are then in issue (i.e. which have not been redeemed or converted at the relevant time)

2. **Subscription**

- 2.1 The Subscriber hereby subscribes for, and Smartpay hereby constitutes and agrees to issue to the Subscriber, the Subscribed Convertible Notes in an aggregate Principal Amount equal to the Subscription Amount, upon the terms set out in this Deed (including the Conditions).

- 2.2 The Subscriber acknowledges and agrees that the Subscription Amount is payable to Smartpay in full on or before 2.00pm (AEST) on the Settlement Date. The Subscription Amount must be paid to Smartpay in immediately available cleared funds into the following bank account:

**Bank:** Commonwealth Bank of Australia

**Account Name:** Smartpay Australia Pty Ltd

**BSB:** 062000

**Account Number:** 15993611

- 2.3 Subject to the Subscriber making payment of the Subscription Amount in accordance with clause 2.2 Smartpay shall issue the Subscribed Convertible Notes to the Subscriber in accordance with this Deed on the Settlement Date.

- 2.4 If the Subscriber fails to pay the Subscription Amount to Smartpay in full in accordance with clause 2.2 Smartpay may terminate this Deed on notice in writing to the Subscriber. If this Deed is terminated by Smartpay under this clause this Deed shall be at an end and neither party will have any right or claim against the other (except for rights or obligations accrued prior to termination including, without limitation, with respect to the Subscriber's failure to comply with clause 2.2).

### 3. **Convertible Notes**

- 3.1 Each Convertible Note issued under this Deed is to be:

- (a) Issued in denominations of AUD\$500,000.00;
- (b) Issued by entry in the Register of the details specified in clause 6.2; and
- (c) Issued, and held by the Subscriber, on and in accordance with the terms and conditions of this Deed (including the Conditions).

### 4. **Status of Convertible Notes**

- 4.1 Each Convertible Note is the direct subordinated obligation of Smartpay. The obligations of Smartpay with respect to the Convertible Notes are and will remain unsecured at all times. For the avoidance of doubt, the Subscriber acknowledges and agrees that the obligations of Smartpay in connection with the Convertible Notes will rank behind all obligations of each Senior Creditor but will rank ahead of ordinary shares and any other class of equity security issued by Smartpay. The Convertible Notes will not be admitted to trading on the NZX, ASX or any other securities exchange.

- 4.2 Subject to clause 4.3 below, Smartpay cannot incur Senior Indebtedness to the Bank in excess of \$25,000,000 during the term without written approval by Holders holding a majority of the Convertible Notes.

- 4.3 In the event Smartpay seeks to incur Senior Indebtedness to the Bank in excess of \$25,000,000 during the term, then Smartpay shall give the Holders notice setting out reasonable details of the debt proposed to be incurred ("Debt Notice"). The Company must receive consent from Holders holding a majority of the Convertible Notes within 20 Business Days of the date of the Debt Notice to any excess debt. If Smartpay has not received written approval to incurring the debt from Holders holding a majority of the Convertible Notes within 20 Business Days of the date of the Debt Notice then Smartpay may, on notice to the Holders, and subject to any applicable

restrictions set out in the financing arrangements which Smartpay has in place with the Bank, redeem all of the Convertible Notes at the face value plus any accrued or outstanding interest and, upon payment of the relevant amount to the Holder the applicable Convertible Note(s) will be deemed to be redeemed and cancelled.

- 4.4 In any distribution of assets by Smartpay in Liquidation (including by way of exercise of rights of set-off) the rights of the Holders to the Bond Moneys are to be subordinated to all moneys payable by Smartpay to its Senior Creditors, so that in any such distribution no payment will be made on account of the Bond Moneys to the Holders until the Senior Creditors of Smartpay have been paid in full.
- 4.5 By subscribing or purchasing a Convertible Note each Holder will be deemed to agree, that:
- (a) In accordance with section 313(3) of the Companies Act, the Holder is accepting a lower priority in respect of the debt represented by the Convertible Note than that which it would otherwise have under section 313; and
  - (b) Nothing in section 313 of the Companies Act will prevent this Deed from having effect in accordance with its terms.
- 4.6 **Subordinated contingent debt:** In the Liquidation of Smartpay, no Holder is entitled to prove for the Bond Moneys except as a debt which is subject to, and contingent upon, prior payment of the Senior Creditors of Smartpay in full.
- 4.7 **Trust:** Any payment, whether voluntarily or in any other circumstances, received by a Holder from or on account of:
- (a) Smartpay (including by way of credit, set-off or otherwise); or
  - (b) the Liquidator or any receiver, administrator, manager or statutory manager of Smartpay,
- in each case in breach of clause 4.4, 4.5 or 4.6 is to be held by the relevant Holder in trust for and to the order of the Senior Creditors. The trust hereby created will be for a term expiring on the earlier of the date on which all Senior Creditors have been paid in full or the date on which the Liquidator determines that Smartpay has no further assets with which to satisfy the claims of the creditors.
- 4.8 **Contract and Commercial Law Act 2017:**
- (a) For the purposes subpart 1 of Part 2 of the Contract and Commercial Law Act 2017, but subject to paragraph (b) below, clauses 4.4 to 4.7 are intended to confer a benefit upon the Senior Creditors of Smartpay and to be enforceable by those Senior Creditors directly.
  - (b) For the purposes of section 15 of the Contract and Commercial Law Act 2017, no amendments made to this Deed will be effective unless the Bank has provided its written consent to the amendments.

## 5. Certificate

- 5.1 Smartpay agrees to issue to the Subscriber on the Issue Date, a certificate in respect of the Convertible Notes issued under this Deed substantially in the form set out in Schedule 3 (Certificate). The Certificate may be executed by or on behalf of Smartpay in any manner permitted by applicable law.



5.2 If a Certificate is lost, stolen, mutilated, or destroyed, it may be replaced on such terms as Smartpay may require. A mutilated or defaced Certificate must be surrendered to Smartpay before a replacement will be issued.

## 6. The Register

6.1 Smartpay agrees to establish and maintain a register of Convertible Notes (Register) in accordance with this Deed and all applicable legal requirements.

6.2 The Register must show the details required by applicable law and such other details as Smartpay considers fit, including:

- (a) The name and address of the Holder;
- (b) Details of the account to which payments in relation to the Convertible Notes are to be made;
- (c) The tax number of the Holder;
- (d) The serial number of the Certificate;
- (e) The date of issue of each Convertible Note; and
- (f) Each cancellation of a Convertible Note.

6.3 Each of the Holder and Smartpay is:

- (a) Entitled to rely upon the entries in the Register as constituting the sole and conclusive record of each Convertible Note and Certificate and as to the person entitled to the Convertible Notes, notwithstanding any discrepancy between the Register and a Certificate;
- (b) Not obliged to make further enquiry as to the status in relation to this Deed, or ownership, of any securities or indebtedness of Smartpay, or of any claim, entitlement or interest, not so entered in the Register; and
- (c) To have the power, in its absolute discretion, to correct (or, in the case of the Holder, require correction of) the Register if the Register is incorrect.

6.4 In the event of any conflict between a Certificate and the particulars recorded in the Register, the Register prevails.

## 7. Payments

7.1 Each payment to the Subscriber under this Deed will be made:

- (a) If any due date is not a Business Day, on the next Business Day. If the next Business Day occurs in the following month, payment will be made on the Business Day preceding the due date;
- (b) In Dollars and in immediately available, fully transferable cleared funds for value on the due date to the bank account noted in the Register;
- (c) Free and clear of any restriction or condition; and

- (d) Except in accordance with clause 8 or to the extent required by law, without any deduction or withholding for or on account of tax or on any other account, whether by way of set-off, counterclaim or otherwise.

7.2 Each payment to Smartpay under this Deed will be made in immediately available, fully transferable, cleared funds for value (and without set-off or deduction of any kind) on the due date to the bank account specified by Smartpay.

**8. No Tax Gross-Up**

8.1 All payments or credits to, or to the account of, the Subscriber (including payments of, and credits in respect of, interest) will be made net of any tax in respect thereof required by law to be withheld, deducted or paid by Smartpay, except to the extent that Smartpay is satisfied that the Subscriber is exempt from any such tax or is a person in respect of whom any such withholding, deduction or payment is not required to be made.

8.2 If, in relation to any Convertible Note, Smartpay becomes liable to make any payment of, or on account of, tax payable by the Subscriber on or in relation to any Convertible Note, Smartpay shall be indemnified by the Subscriber and the personal representatives or successor of the Subscriber in respect of any such liability, and any moneys paid by Smartpay in respect of any such liability may be recovered by action from the Subscriber and the personal representatives or successor of the Subscriber (as the case may be) as a debt due to Smartpay.

8.3 Smartpay will not be required to make any payment to the Subscriber by way of gross-up or otherwise with respect to any deduction or withholding from any payment made under this clause 8.

8.4 Smartpay is entitled for the purposes of this clause 8 to rely, without further enquiry, upon any evidence produced or statement made by, or on behalf of, the Subscriber in relation to the Subscriber's tax status or tax residency.

**9. Transfer and Assignment**

9.1 The Subscriber may at any time, transfer to any person any of its Convertible Notes and in that event the transferee shall have the same rights against Smartpay as it would have had if it had been a party to this Deed, provided that prior to such transfer taking effect the transferee shall execute a Transfer Deed (and deliver the same to Smartpay) pursuant to which the transferee agrees to be bound by this Deed. Smartpay shall be under no greater obligation to any such transferee in connection with a Convertible Note as a result of a transfer than it would have been had no such transfer taken place. No part transfers of a Convertible Note are permitted.

9.2 Any transfer or purported transfer of Convertible Notes other than in accordance with clause 9.1 is prohibited except if undertaken with the prior written consent of Smartpay.

**10. Warranties and Covenants**

10.1 The Subscriber hereby:

- (a) Acknowledges and agrees that there is no product disclosure statement, investment statement, prospectus or other such document in connection with the issue of the Convertible Notes and that any documentation provided to it in connection with Convertible Notes does not contain the same level or type of information as would be required to be contained in such documentation if the capital raising were a 'regulated

offer' under section 41 of the FMCA or an offer requiring disclosure under section 706 or 707 of the Corporations Act;

- (b) Warrants and undertakes that it is:
  - (i) a 'sophisticated investor' within the meaning of section 708(8) of the Corporations Act or a 'professional investor' within the meaning of section 708(11) of the Corporations Act, where it is resident in Australia; or
  - (ii) a 'wholesale investor' within the meaning of clause 3(2) or clause 3(3) of Schedule 1 to the FMCA, where it is resident in New Zealand
- (c) Acknowledges and agrees that the information in this Deed is provided to enable Smartpay and its share registrar to process the Subscriber's subscription for Convertible Notes and Shares in Smartpay and to provide it with information about Smartpay and the Smartpay group of companies;
- (d) Acknowledges and agrees that none of Smartpay, its advisers or agents has provided it with investment advice or financial product advice and that none of them has an obligation to provide advice concerning its decision to subscribe for Convertible Notes;
- (e) Acknowledges and agrees that its decision to subscribe for Convertible Notes in Smartpay has not been made as a result of any verbal or written representation as to fact or otherwise made by or on behalf of Smartpay or any of its employees, directors, officers or advisers, and has been based entirely on currently available public information concerning Smartpay;
- (f) Warrants and undertakes that it has full power and authority to enter into this Deed and to be issued the Convertible Notes and to be issued Shares upon the conversion of any Convertible Notes;
- (g) Authorises Smartpay to disclose information contained in this Deed to its related companies and its share registrar, and for Smartpay, its related companies, and for Smartpay's share registrar to disclose information in situations where Smartpay or any of its related companies, or the share registrar are required or permitted to do so by any applicable law or by a governmental, judicial or regulatory entity or authority in any jurisdiction.

10.2 Smartpay represents and warrants to the Subscriber on the date of this Deed and on the Issue Date that:

- (a) It is not currently insolvent or in breach or default of any of its obligations to its Senior Creditors;
- (b) It is a company duly incorporated under the laws of New Zealand;
- (c) It has power to enter into this Deed and to issue the Convertible Notes and to perform its obligations under this Deed and the Convertible Notes;
- (d) It has all the necessary consents and has taken all necessary board, corporate and other action (including as required under the Listing Rules) to authorise the execution and performance of this Deed and the issue of the Convertible Notes;
- (e) It is in compliance with its obligations under NZX Listing Rule 10.1 (Material Information);
- (f) Its obligations under this Deed and the Convertible Notes are legally binding and enforceable, subject to general equitable principles and to bankruptcy, insolvency or similar laws affecting creditors generally; and

- (g) The execution and performance of this Deed and the issue of the Convertible Notes will not constitute a breach under any law or regulation by which Smartpay is bound, including the constitutional documents of Smartpay and the Listing Rules.

**11. Notices**

- 11.1 All notices and other communications required or permitted to be given pursuant to the terms of this Deed will be in writing and are to be made by email, personal delivery or by post to the addressee at the email address or address, and is to be marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other parties.
- 11.2 No communication is to be effective until received. A communication will, however, be deemed to be received by the addressee:
  - (a) In the case of an email, on the Business Day on which it has been despatched or sent or, if despatched or sent after 5 p.m. (in the place of receipt) on a Business Day or, if despatched or sent on a non-Business Day, on the next Business Day after the date of despatch/sending;
  - (b) In the case of personal delivery, when delivered, and
  - (c) In the case of a letter, on the fifth Business Day after posting by mail.
- 11.3 The following addresses and contact details are designated by the parties (until changed in accordance with Clause 11.1):

**Smartpay Holdings Limited**

205 - 209 Wairau Road  
Glenfield  
Auckland 0627  
New Zealand

PO Box 100490 North Shore  
Auckland 0745  
New Zealand

Contact: Managing Director  
Email: [bradley.gerdis@smartpay.com.au](mailto:bradley.gerdis@smartpay.com.au)

**Subscriber**

As per the details recorded in the Schedule.

**12. Miscellaneous**

- 12.1 The warranties, undertakings, agreements and indemnities given under or pursuant to this Deed do not merge on settlement but remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.
- 12.2 This Deed contains all of the terms, representations and warranties made between the parties and supersedes all prior understandings, discussions, correspondence and agreements (whether written or oral) covering the subject matter of this Deed.

12.3 No amendment to this Deed will be effective unless it is in writing and signed by all the parties.

12.4 **Waiver.**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed or under of the documents delivered in connection with this Deed by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Deed or other document;
- (b) Any waiver or consent given by any party under this Deed will only be effective and binding on that party if it is given or confirmed in writing by that party;
- (c) No waiver of a breach of any term of this Deed will operate as a waiver of any subsequent breach of that term or a breach of any other term of this Deed.

12.5 Subject to clause 9.1, no party may assign or be relieved of its rights or obligations under this Deed without the prior written consent of all parties.

12.6 Each party will, at its own expense and when requested by another party, promptly sign and deliver, execute, procure, pass and do all such further documents, acts, matters, resolutions and things as may be necessary or desirable for effecting the transactions contemplated by this Deed.

12.7 This Deed may be executed in a number of counterpart copies each of which will constitute an original of this Deed, and all of which together will constitute one and the same instrument. A party may enter into this Deed by signing a counterpart copy and sending it to the other parties including by facsimile. Each of the parties shall promptly sign the original copies of this Deed (such copies to be signed by all the parties) after the execution of counterparts. However, delay or failure by any party to deliver to the other party the original executed counterpart exchanged by facsimile will not affect the validity of this Deed.

12.8 Time will be of the essence in the performance by any party of its obligations under this Deed.

12.9 Each party shall bear its own costs in relation to the negotiation, preparation, execution and performance of this Deed.

12.10 This Deed shall be governed by the laws of New Zealand and the parties hereby submit to the non-exclusive jurisdiction of the courts of New Zealand in connection with any dispute or disagreement arising out of or concerning this Deed.

EXECUTED AS A DEED ON BEHALF OF

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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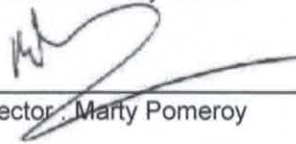
EXECUTED AS A DEED ON BEHALF OF

**EXECUTED AS A DEED**

**EXECUTED as a DEED on behalf of  
SMARTPAY HOLDINGS LIMITED**  
by two directors:



\_\_\_\_\_  
Director : Bradley Gerdis



\_\_\_\_\_  
Director : Marty Pomeroy

**EXECUTED as a DEED on behalf of**  
**Anacacia Pty Ltd ATF The Wattle Fund**  
by director/s/secretary  
in the presence of:



\_\_\_\_\_  
Director



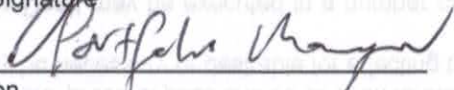
\_\_\_\_\_  
Director/Secretary

TOM GRANGER

Witness Name



Witness Signature



Occupation

53 Coopers St North Bay

Address

**SCHEDULE 1**

**Subscriber / Subscription Details**

<b>Name of Subscriber:</b>	<b>Anacacia Pty Ltd ATF The Wattle Fund</b>
<b>Postal Address:</b>	Level 2, 53 Cross St, Double Bay, NSW 2028
<b>Physical Address:</b>	Level 2, 53 Cross St, Double Bay, NSW 2028
<b>Attention:</b>	Tom Granger
<b>Phone Number:</b>	
<b>Email:</b>	
<b>Subscribed Convertible Notes (each note is in a Principal Amount of AUD\$500,000)</b>	12 (twelve)
<b>Subscription Amount:</b>	AUD\$6,000,000
<b>Bank Account:</b> (the bank account into which interest and principal upon redemption of Convertible Notes shall be paid )	
<b>IRD / TFN Number:</b>	

## SCHEDULE 2

### Conditions

#### 1. Interpretation

##### 1.1 In this Schedule 2, unless the context otherwise requires:

*Conversion Date* means the date falling 10 Business Days after the date on which a Conversion Notice is given by the Holder to Smartpay;

*Conversion Notice* has the meaning given to it in Condition 5.1;

*Conversion Price* means AUD\$0.25 per Share (as adjusted in accordance with Condition 7 or Condition 8);

*Default Interest Rate* means 12% per annum;

*Event of Default* means the occurrence, at any time and for any reason, whether or not within the control of Smartpay, of the following:

- (a) A distress, attachment, execution or other legal process is levied against property of Smartpay and is not discharged or stayed within twenty Business Days or a receiver, trustee, manager, administrator or similar officer is appointed in respect of Smartpay or any of its property; or
- (b) An order is made, resolution passed or other step taken by a person for the liquidation of Smartpay, except for the purpose of and followed by a reconstruction or reorganisation (not involving or arising out of insolvency); or
- (c) Smartpay is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989 or a statutory manager is appointed, or any step is taken with a view to any such appointment, in respect of it under that Act;
- (d) Smartpay breaches a covenant under its Senior Indebtedness with the Bank or defaults in the payment of any principal of or interest on that Senior Indebtedness as and when the same shall be due and payable and the Bank has accelerated that Senior Indebtedness ;
- (e) Smartpay fails to deliver to the Holder the Shares required to be issued with respect to a Conversion Notice submitted by the Holder under these Conditions within twenty Business Days of the applicable Conversion Date;
- (f) Smartpay fails to perform or observe any other covenant, agreement, term, provision, undertaking or commitment under these Conditions (other than any covenant to pay interest on the Convertible Notes) and such default shall continue for a period of twenty Business Days after the delivery to Smartpay of written notice that Smartpay is in default;
- (g) It becomes unlawful for Smartpay to perform or comply with its obligations under a Convertible Note or these Conditions in any material respect;
- (h) Smartpay and its subsidiaries (on a consolidated basis) reports gross revenue of less than NZ\$10m in respect of a half year reporting period for 3 consecutive reporting periods from the Issue Date (with the first reporting period to end on 30 September 2018, the second period to end on 31 March 2019, and then each 30 September and 31 March thereafter);



*Final Election Date* means the date falling 24 months after the Issue Date (or such later date as Smartpay may agree in writing);

*Final Interest Date* means, in respect of any Convertible Note, the earlier of:

- (a) The date on which such Convertible Note is redeemed and all amounts due under this Deed with respect to such Convertible Note have been fully and finally paid and discharged; and
- (b) The Conversion Date of such Convertible Note;

*Interest Amount* has the meaning given to it in Condition 3.3;

*Interest Date* means:

- (a) The last Business Day of each Month falling before the Final Interest Date;
- (b) The Final Interest Date;

*Interest Payment Date* means the 1<sup>st</sup> Business Day after each Interest Date;

*Interest Period* means, in relation to a Convertible Note, the period from (and including) an Interest Date (or, in the case of the first Interest Period in relation to a Convertible Note, the Issue Date of that Convertible Note) to (but excluding) the next Interest Date;

*Interest Rate* means 8% per annum;

*Listing Rules* means the NZX Listing Rules and/or the ASX Listing Rules, as applicable;

*Lock-up Notice* means a written notice (which may be given by email) from the Bank to Smartpay confirming that an event of default (however described) under Smartpay's financing arrangements with the Bank has occurred and that interest on the Convertible Notes should be locked-up and capitalised on and from the effective date specified in that notice (which may be any date on or after the occurrence of the applicable event of default referred to therein) and the Company undertakes to notify Noteholders that there is an event of default and a Lock-Up Notice received from the Bank to Smartpay;

*Permitted Issue* means an issue of Shares in aggregate not exceeding 20% of the fully diluted ordinary shares on issue at the date of this Deed, such 20% to be calculated on a "post conversion" basis assuming that all Convertible Notes have been converted into ordinary shares:

- (a) To any executive director, officer, or employee of Smartpay or any of its subsidiaries under any employee share or option ownership scheme;
- (b) Upon conversion of any share option on issue as at the Issue Date;
- (c) To raise capital of up to AUD\$1 million in aggregate from the Issue Date (whether by means of one or more Share issues);
- (d) And includes Shares issued or deemed to be issued by Smartpay upon conversion of any convertible notes issued as part of the Transaction;

*Redemption Date* means the earlier of:

- (a) The date falling 27 months after the Issue Date or such earlier date agreed between Smartpay, the Bank and Holders holding a majority of the Convertible Notes;

- (b) The date falling 3 months after an Event of Default occurs unless Holders holding a majority of the Convertible Notes waive such Event of Default; and
- (c) The date determined under Condition 9.1,

subject in each case to the repayment of the amounts referred to in clause 4.1 being permitted under the financing arrangements which Smartpay has in place with the Bank at the relevant time, and if that is not the case, the Redemption Date will fall on the next Business Day on which the payment of those amounts is permitted under those Bank arrangements;

*Takeover Offer* means a full offer or a partial offer (in each case, as defined in the Takeovers Code) for Shares in Smartpay (whether or not such offer also extends to convertible securities in Smartpay);

*Takeovers Code* means the New Zealand Takeovers Code Approval Order 2000 (SR 2000/210).

## 2. Evidence of Indebtedness; Promise to Pay

- 2.1 Each Convertible Note is issued by Smartpay as evidence of indebtedness of Smartpay to the Holder for and in respect of the Principal Amount of that Convertible Note and all interest and other amounts payable under this Deed.
- 2.2 Smartpay promises to pay the Holder:
  - (a) Interest under Condition 3.3;
  - (b) Default interest under Condition 3.4; and
  - (c) Amounts payable on redemption under Condition 4 (including default interest payable under Condition 4.4),

in accordance with these Conditions and the Deed.

## 3. Interest

- 3.1 Each Convertible Note will bear interest on its Principal Amount at the Interest Rate.
- 3.2 Interest will accrue:
  - (a) Daily on each Convertible Note from its Issue Date until the earlier of:
    - (i) The date on which it is redeemed under Condition 4.2;
    - (ii) Its Redemption Date; and
    - (ii) The Conversion Date; and
  - (b) On the basis of a 365-day year and the actual number of days elapsed or to elapse.
- 3.3 Subject to clause 3.5, the interest which has accrued in respect of each Convertible Note during the Interest Period relating to that Convertible Note ending on each Interest Date (rounded to the nearest Dollar, *Interest Amount*) shall be paid by Smartpay to the Holder on the relevant Interest Payment Date.

3.4 If, on any Interest Payment Date, Smartpay fails to comply with its obligation under Condition 3.3 to pay the Interest Amount to the Holder, default interest will accrue to the Holder at the Default Interest Rate (calculated on a daily basis) on the unpaid amount from the relevant Interest Payment Date until payment in full of the unpaid amount (including the default interest). For the avoidance of doubt, failure to pay interest on the Convertible Notes will not constitute an Event of Default.

3.5 If the Bank has given a Lock-up Notice to Smartpay, interest will not be payable on any applicable Interest Date but will instead be capitalised and will be added to the principal amount of the Convertible Note on and from that Interest Date (and will bear interest in accordance with this clause 3.2 on and from that date). Interest will continue to capitalise until the Bank has confirmed to Smartpay in writing that the circumstances giving rise to the issue of the Lock-up Notice have ceased to apply or been cured or waived by the Bank. Following that cessation of the Lock-up period, interest will become payable again on each Interest Date in cash under clause 3.3 or clause 3.4 (as the case may be).

#### 4. **Redemption**

4.1 Subject to no Conversion Notice having been issued with respect to the Convertible Notes, Smartpay agrees that on the Redemption Date of a Convertible Note it will pay to the Holder an amount equal to the aggregate of:

- (a) The Principal Amount of that Convertible Note; and
- (b) All interest due and payable (but not paid) under Condition 3.3; and
- (c) All interest due and payable (but unpaid) under Condition 3.4.

4.2 Each Convertible Note redeemed under this Condition 4 must be redeemed in whole and not in part and shall be cancelled upon such redemption.

4.3 No Convertible Note may be repaid, redeemed or repurchased except in accordance with this Condition 4.

4.4 If there is an Event of Default that is not remedied within 20 Business Days or on, on the Redemption Date, Smartpay fails to comply with its obligation under Condition 4.1, default interest will accrue to the Holder at the Default Interest Rate plus 13% p.a. (calculated on a daily basis) on the unpaid amount(s), including the face value of the Notes from the earlier of the Event of Default or the Redemption Date until payment in full of the unpaid amount(s) (including the default interest).

4.5 Within 10 Business Days following the Final Election Date, Smartpay shall seek sufficient funds to ensure that it can redeem the Convertible Notes and within 40 Business Day shall provide the Noteholders with reasonable evidence of its capacity to do so.

#### 5. **Conversion**

5.1 To the extent that Convertible Notes have not been redeemed in accordance with Condition 4, the Holder may, subject to Condition 5.7, elect by notice in writing to Smartpay (*Conversion Notice*) to convert all or some of its Convertible Notes into Shares, at any time prior to the Final Election Date. The Holder must surrender its Certificate(s) in respect of the Convertible Notes to Smartpay together with the Conversion Notice or, if a Certificate is mutilated, defaced, lost, stolen or destroyed, deliver to Smartpay a declaration to that effect. A Conversion Notice is irrevocable unless agreed otherwise in writing by Smartpay. If the Holder fails to deliver a Conversion Notice to Smartpay on or before the Final Election Date Smartpay must provide written notice to the Holder that their right to convert will lapse 10 Business Days after receipt of this notice.

5.2 Subject to 5.7 below, if a Conversion Notice is issued in accordance with clause 5.1, Smartpay shall:

(a) Allot to the Holder on the Conversion Date a number of Shares calculated as follows:

Shares = A / Conversion Price;

Where:

A = equals the Principal Amount of the Convertible Note(s) to be converted on the relevant Conversion Date;

(b) At the same time as allotting the relevant Shares to the Holder under sub-clause (a) above, pay to the Holder an amount equal to all interest due (but not paid) under Condition 3.3 and 3.4 to the date immediately preceding the date of allotment with respect to the Convertible Note(s) to be converted.

5.3 Upon the issue of Shares under Condition 5.2(a), Smartpay shall cancel the relevant Certificate for the Convertible Notes converted and, if applicable, issue a new Certificate for any remaining Convertible Notes covered by the Certificate accompanying the Conversion Notice.

5.4 Shares allotted pursuant to the conversion of Convertible Notes shall be issued as fully paid and shall rank, from the date of allotment, equally with existing Shares of Smartpay in all respects.

5.5 The Company shall, if required under the Listing Rules, make application to have Shares allotted upon conversion of Convertible Notes listed for Quotation, if Smartpay is listed on the NZX or ASX at the time.

5.6 Convertible Notes may only be converted in whole and not in part.

5.7 Notwithstanding anything to the contrary in these Conditions, the Holder shall not have the right to convert any of the Convertible Notes into Shares (and shall not issue a Conversion Notice), to the extent that after giving effect to the conversion in accordance with the applicable Conversion Notice, the Holder (together with the Holder's associates) would hold or control more than 19.99% of the total voting rights in Smartpay. For the purposes of this Condition 5.7 the terms "associates", "hold or control" and "voting rights" have the meanings given to them in the New Zealand Takeovers Code Approval Order 2000.

## 6. Parties' obligations prior to conversion

6.1 Each party agrees to take all necessary steps (including obtaining all necessary statutory, governmental and other consents) to ensure that Smartpay is able to properly allot Shares on the Conversion Date in accordance with Condition 5.2.

## 7. Dilutionary Share Issues

7.1 If Smartpay issues any Shares (other than a Permitted Issue) prior to the Conversion Date at an issue price of less than the Conversion Price of A\$0.25 (as adjusted under Condition 8) ("Dilutionary Share Issue"), the Conversion Price shall, subject always to clause 7.2, be adjusted downwards, immediately prior to the Conversion Date, to the weighted average issue price of all Dilutionary Share Issues.

7.2 If the effect of clause 7.1 is to reduce the Conversion Price below AUD\$0.21845 (i.e. so that more than 2,288,853 Shares would be issued on conversion of a Convertible Note) then the Conversion Price will be adjusted downwards to AUD\$0.21845 and, in addition to the issue of

the relevant Shares on a conversion of a Convertible Note, Smartpay shall make a cash payment to the Holder on conversion that equates to the difference as if there was no lower limit on the Conversion Price.

By way of example, if Smartpay issues 10,000,000 Shares at AUD\$0.18 and 20,000,000 Shares at AUD\$0.16 and neither of those issues is a Permitted Issue then the Conversion Price shall be reduced to the higher of:

- i. AUD\$0.1666 (being  $((10m \times 0.18) + (20m \times 0.16)) / 30m$ ) or;
- ii. AUD\$0.21845 (being  $(\$7.5m / (19.99\% \times 171.752m))$ ).

Therefore the Conversion Price will be \$0.21845 plus a payment from Smartpay to the Holder for each Convertible Note of A\$25,925 (being  $500,000 \times (\$0.21845 - \$0.1666)$ ).

## 8. Participation, Bonus Issues, Reorganisation and Winding Up

8.1 The Holder's Convertible Notes will not be included for participation in any new issue of securities to existing holders of Shares in Smartpay unless the Holder exercises its rights to convert all or some of the Convertible Notes into Shares and is issued Shares upon such conversion before the record date for the determination of entitlements to the new issue of securities, and participates in the relevant issue as a result of being the holder of Shares. The Holders are not precluded from participating in any issue to the extent that they hold existing ordinary shares or subscribe for new shares separate to their Convertible Note holding. Unless not allowed by the Listing Rules, Smartpay shall give the Holder reasonable notice of any new issue of securities before the record date for determining entitlements to the new issue.

8.2 If, prior to the redemption or conversion of the Convertible Notes, there is a bonus share issue ("Bonus Issue") to the holders of Shares, the number of Shares into which the Convertible Notes will convert will be increased by the number of Shares which the Holder would have received if the Convertible Notes had been converted into Shares before the record date for the Bonus Issue ("Bonus Shares"). The Bonus Shares must be paid up by Smartpay out of the profits or reserves (as the case may be) in the same manner as was applied in the Bonus Issue.

8.3 If there is a pro rata issue (other than a Bonus Issue) to the holders of Shares during the currency of, and prior to the redemption or conversion of the Convertible Notes, the Conversion Price will be adjusted in accordance with the formula provided in Listing Rule 8.1.7 (as amended from time to time), whether or not Smartpay is listed on the NZSX at the time.

8.4 If, prior to the redemption or conversion of the Convertible Notes, there is a reconstruction (including consolidation, subdivision, split, reduction or return) of the issued capital of Smartpay, other than a Bonus Issue or a pro-rata issue of the kind referred to in Condition 8.3, then the number of Shares into which a Convertible Note is to convert or the Conversion Price or both shall be recalculated (as appropriate) by the Board acting reasonably in compliance with the Listing Rules.

8.5 Any calculations or adjustments which are required to be made under this Condition 8 will be made by the Board and, in the absence of manifest error, are final and conclusive and binding on Smartpay and the Holder.

8.6 Smartpay must within a reasonable period give to the Holder notice of any change under Condition 8 to the Conversion Price or to the number of Shares into which a Convertible Note will convert.

## 9. Takeover Offer

9.1 Notwithstanding anything else to the contrary in these Conditions, if a person makes a Takeover Offer with respect to Smartpay and such Takeover Offer becomes unconditional then either Smartpay or the Holder may notify the other in writing that it wishes the Convertible Notes to be redeemed or converted, in which event the Redemption Date or Conversion Date shall be the date falling at the earlier of 10 Business Days after the date of such notice or the day before settlement of the Takeover Offer. All unpaid interest accrued or that would have been payable until the date of 27 months after issue must also be paid to the Holders if the Takeover Offer is below A\$0.30 per share.

10. **Other Provisions**

10.1 Each Convertible Note which is redeemed or converted into a Share in accordance with this Deed is and will be deemed to be cancelled. Neither Smartpay nor the Holder will have any further liabilities or obligations in respect of a cancelled Convertible Note. For the avoidance of doubt, all Convertible Notes the subject of a Conversion Notice shall be cancelled upon Conversion under Condition 5.2.

10.2 The Conditions set out in this Schedule 2 may be amended with the approval of both the Holders by Extraordinary Resolution and by Smartpay. The Conditions as so amended will be binding on Smartpay and all Holders (whether or not they approved the amendment).

SCHEDULE 3

Form of Convertible Note Certificate

This Certificate is not a document of title and does not evidence ownership of Convertible Notes. Ownership is determined solely by reference to the Register of Convertible Notes.

Certificate No:

SMARTPAY HOLDINGS LIMITED  
CONVERTIBLE NOTE CERTIFICATE

Aggregate Principal Amount:	AUD\$[?]
Issue Date:	[?]
Interest Rate:	8% per annum
Redemption Date:	27 months after Issue Date (unless an Event of Default occurs earlier)
Holder:	[xxxxxx]

Smartpay Holdings Limited (*Smartpay*) certifies that the Holder is registered as the holder of [?] Convertible Notes having an aggregate Principal Amount stated above issued by Smartpay under and in accordance with a Convertible Note Subscription Deed dated [?] 2018 between Smartpay and [xxxxx] (*Subscription Deed*).

Subject to the Subscription Deed, each Convertible Note will bear interest at the Interest Rate specified above and in accordance with Condition 3 in Schedule 2 to the Subscription Deed.

The Convertible Notes may, at the election of the Holder or, in certain circumstances, Smartpay, be converted into Shares in Smartpay in accordance with Condition 5 in Schedule 2 to the Subscription Deed prior to the Redemption Date.

This Certificate is not evidence of the continued existence of any Convertible Note.

Unless the context otherwise requires, capitalised terms in this Certificate have the meaning given to them in the Subscription Deed.

Date:

Signed by SMARTPAY HOLDINGS LIMITED  
by:

\_\_\_\_\_  
Director/Authorised Person

\_\_\_\_\_  
Director/Authorised Person

**SCHEDULE 4**

**Transfer Deed**

**TO: Smartpay Holdings Limited**  
205 - 209 Wairau Road  
Glenfield  
Auckland 0627  
New Zealand

**Dated:** \_\_\_\_\_

I/we \_\_\_\_\_ acknowledge and undertake in favour of Smartpay Holdings Limited, as a condition to Smartpay Holdings Limited registering me/us as the holder of one or more Convertible Notes which I/we propose to acquire from [*insert name of current Holder*], that, from the date on which we are registered as the holder of the relevant Convertible Note(s):

- (a) I/we will be bound by the Subscription Deed (including all schedules thereto) between Smartpay Holdings Limited and [*insert name of current Holder*] dated [*insert date of deed*] (copy attached) (the "Subscription Deed") in the same manner and to the same extent as if I/we were named as a party thereto in place of [*insert name of current Holder*];
- (b) I/we will comply with all obligations of the Holder under the Subscription Deed (including all schedules thereto).

I/we acknowledge and agree that the above undertakings are given for the benefit of, and are enforceable by, Smartpay Holdings Limited.

**EXECUTED as a DEED** on behalf of \_\_\_\_\_ )  
[xxxxxxx] by two directors \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

Name: [xxxxxx]  
Address: \_\_\_\_\_  
Occupation: \_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

SMARTPAY HOLDINGS LIMITED  
205-209 Wairau Road  
Glenfield Auckland 0627





