

Additional Terms of Service

AROFLO ADDITIONAL TERMS OF SERVICE

In these Additional Terms of Service (**Additional Terms**), capitalised words have the meaning set out in the AroFlo Terms of Service (**Terms**).

These Additional Terms supplement the Terms, and are between AroFlo and the Client.

These Additional Terms govern the access to and use of the payment data tokens functionality within the AroFlo System (**Payment Gateway Functionality**), provided through our third party service provider, Spreedly, Inc. (**Spreedly**).

1. ACCEPTANCE

- 1.1. These Additional Terms form a binding legal agreement between AroFlo and the Client. By using the AroFlo System with the Payment Gateway Functionality, the Client agrees to comply with and be legally bound by these Terms. Please read these Terms carefully. If the Client has any questions, they should contact AroFlo using the contact details at the end of these Terms.
- 1.2. The Client acknowledges and agrees to these Additional Terms by: (i) ticking 'I Agree'; (ii) accessing or using the AroFlo System's Payment Gateway Functionality; or (iii) making any payment for the AroFlo System. If the Client does not agree to these Additional Terms, they should cease accessing or using the AroFlo System's Payment Gateway Functionality immediately.
- 1.3. If the Client is agreeing to these Terms on behalf of an entity, including but not limited to a company or other organisation, they represent and warrant that they have the power and authority to enter into these Terms and bind such entity and act on behalf of any person who uses the AroFlo System (each a **User**, collectively referred to as **Users**).
- 1.4. The Client may authorise their employees, contractors, authorised agents acting in the ordinary course of business and directly working for or managed by the Client or the Client's customers to access and use the AroFlo Systems as **Users**. The Client must ensure that each **User** using or accessing the AroFlo System does so in accordance with these Terms.
- 1.5. AroFlo reserves the right to make changes to these Additional Terms at any time, effective upon the posting of the modified Additional Terms. AroFlo will use reasonable endeavours to communicate these changes to the Client via email. It is the Client's obligation to ensure that they (and each **User** where applicable) has read, understood and agreed to the most recent Additional Terms available on the Site.
- 1.6. Using the Site or the AroFlo System may be prohibited or restricted in certain countries. If the Client or any **Users** access or use the AroFlo System outside of Australia, the Client is responsible for complying with the laws and regulations of the country from which they access or

use the AroFlo System.

2. THE CARD ACCOUNT UPDATER SERVICE

- 2.1. Clients designated by Visa as high-risk (High-Risk Acquirer Program with a condition of RED or higher) or on the MasterCard Alert to Control High-risk Merchants (MATCH) system may not participate in Spreedly's account updater (**Account Updater**).
- 2.2. Third party payment portfolios must not contain more than 20 percent High-Risk merchant activity.
- 2.3. Clients must:
 - 2.3.1. not be under any special conditions imposed by Visa Corporate Risk Management;
 - 2.3.2. have been operating as a business for no less than 6 months;
 - 2.3.3. maintain a chargeback ratio of less than 3 percent;
 - 2.3.4. not be engaged in business categorized by the following merchant category codes: 5962, 5966, 5967, 7995;
 - 2.3.5. protect the security of the information sent to or received from Account Updated using the same standard of care they use to protect and prevent misappropriation or improper disclosure of their confidential information (and in any case no less than reasonable care);
 - 2.3.6. comply with the relevant network operating regulations;
 - 2.3.7. have a valid business need to receive updated account information (such as subscription or recurring charges, or the implementation of express checkout functionality);
 - 2.3.8. request an account update for every participating cardholder in the Client's customer database once every 180 days;
 - 2.3.9. not submit inquiries for customer accounts to which you have no existing relationship, or have not received the appropriate consent to use the Account Updater and/or the Payment Gateway Functionality;
 - 2.3.10. not request authorisation on customer accounts that have returned a response of 'Close Account' in the Account Updater; and
 - 2.3.11. not submit inquiries to Account Updater on behalf of a third party.

3. DATA & DATA SECURITY

- 3.1. The Client acknowledges and agrees that all Confidential Transaction Data (as defined in the Card Network rules) or other Data that you provide to the Card Networks in connection with the program may be

used by them for the purposes described in their respective rules and for the purpose of providing the program and other services as requested by the Client.

- 3.2. For the avoidance of doubt, the Client represents and warrants that they will be solely responsible for providing notice to and obtaining any necessary consent from cardholders in connection with the processing of Data by the Card Networks for the purposes set out in this clause.
- 3.3. The Client also represents and warrants that they will be solely responsible for handling requests from cardholders to access, correct, block or delete their Data in connection with the program.
- 3.4. Whilst Spreadly uses best endeavours to secure Data contained within the Payment Gateway Functionality, neither AroFlo nor Spreadly can guarantee that third parties will not gain unauthorized access to Data and/or use that Data for improper purposes. The Client acknowledges that processing the Data regarding them and their customers through the Payment Gateway Functionality occurs at their own risk.
- 3.5. The Client represents and warrants that they have obtained all necessary rights and consents to disclose to AroFlo and Spreadly, and/or allow AroFlo and Spreadly to collect, use, retain and disclose any Data that the Client provides Spreadly and AroFlo or authorizes Spreadly and AroFlo to collect.
- 3.6. The Client is fully responsible for the security of Data on their website or otherwise in their possession.
- 3.7. The Client agrees to comply with the Payment Card Industry Data Security Standards (PCI-DSS) and the Payment Application Data Security Standards (PA-DSS), as applicable.
- 3.8. Upon request, the Client agrees to provide evidence of their compliance with the PCI-DSS and/or PA-DSS, as applicable, to AroFlo's reasonable satisfaction.
- 3.9. The Client acknowledges and agrees that: (a) AroFlo is not responsible for any corruption or loss of any Data if such corruption or loss is due to an act or omission by the Client, its employee(s), contractor(s), agent(s) or any person the Client permits to use the AroFlo System; and (b) the Client is responsible for complying with all laws and regulations regarding the collection, use and disclosure of Data including but not limited to the *Privacy Act 1988* (Cth), the *Spam Act 2003* (Cth) and any other requirements under Australian law.
- 3.10. Any importing or exporting of Data to the Client's Account, at the request of the Client, may be charged an additional fee.

4. CLIENT OBLIGATIONS

- 4.1. The Client acknowledges and agrees that their use of the Payment Gateway Functionality is subject to their compliance with the Spreadly Terms of Service, located at <https://www.spreadly.com/terms-of-service> and as updated from time to time (**Spreadly Terms**).

4.2. The Client warrants that they will not do anything, or fail to do anything, that causes or contributes to AroFlo's breach of the Spreadly Terms.

4.3. The Client warrants that they will not use the AroFlo System with the Payment Gateway Functionality, to improperly, fraudulently, unlawfully or otherwise without the consent of their customers, process payments.

5. INTELLECTUAL PROPERTY

In the absence of any written agreement to the contrary, the parties agree that Spreadly is the sole owner or the authorised licence holder of the intellectual property that comprises the Payment Gateway Functionality including, for the avoidance of doubt, all patents, copyrights, trademarks, trade secrets and the right to register such protections.

6. LIABILITY AND INDEMNITIES

6.1. Limitation of Liability

6.1.1. AroFlo disclaims all warranties, express or implied, including, without limitation, any implied warranties of merchantability, fitness for purpose and non-infringement of third party intellectual property rights or lack of Malware for the Payment Gateway Functionality.

6.1.2. Despite anything to the contrary, to the maximum extent permitted by law, AroFlo will not be liable for, and the Client waives and releases us from and against, any liability caused or contributed to by, arising from or connected with:

- (a) the Client or their personnel's acts or omissions;
- (b) any use or application of the AroFlo System and the Payment Gateway Functionality by a person or entity other than the Client;
- (c) any works, services, goods, materials or items which do not form part of the AroFlo System or which have not been provided by AroFlo; and
- (d) any event outside of AroFlo's reasonable control.

6.1.3. Despite anything to the contrary, to the maximum extent permitted by law:

- (a) AroFlo will not be liable for any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise;

- (b) AroFlo's liability under these Additional Terms will be reduced proportionately to the extent the relevant liability was caused or contributed to by the acts of omissions of the Client or their personnel;
- (c) AroFlo's aggregate liability arising from or in connection with this Agreement will be limited to resupplying the AroFlo System to the Client or, in AroFlo's sole discretion, to AroFlo repaying the Client the Monthly Fee in respect of the supply of the AroFlo System to which the liability relates.

6.1.4. Nothing in these Additional Terms is intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth) and the Australian Consumer Law or another legislation in respect of which liability may not be excluded.

6.2. Indemnities

6.2.1. Despite anything to the contrary and to the maximum extent permitted by law, the Client will at all times indemnify and hold harmless AroFlo from and against any liability that AroFlo may suffer, incur or otherwise become liable for, arising from or in connection with:

- (a) any breach by the Client (or their personnel) of any provision of these Additional Terms;
- (b) the Client or any of their personnel infringing the rights of any third party; or
- (c) any act or omission of the Client or their personnel that is negligent, wilful or unlawful.

7. TERM AND TERMINATION

7.1. These Additional Terms commence on the date these Additional Terms are accepted and shall continue until the earlier of termination of these Additional Terms or the Terms.

7.2. AroFlo may terminate these Additional Terms immediately at any time by notice to the Client if:

7.2.1. the Client breaches these Additional Terms (other than with respect to clause 4.2) and fails to remedy such breach within seven (7) days of the date of a notice in writing specifying the breach and requiring its remedy;

7.2.2. the Client breaches clause 4.2 of these Additional Terms;

7.2.3. the Client commits any act of bankruptcy or insolvency;

7.2.4. a third party brings, or threatens to bring, proceedings against AroFlo with respect to any alleged infringement of third party intellectual property rights by AroFlo relating to the AroFlo System, or against Speedly with respect to any alleged infringement of

third party intellectual property rights by Spreedly relating to the Payment Gateway Functionality;

7.2.5. a change of control occurs in relation to the Client.

7.3. AroFlo may terminate these Additional Terms if:

7.3.1. AroFlo terminates its agreement with Spreedly in relation to the Payment Gateway Functionality;

7.3.2. more than three (3) years have elapsed since these Additional Terms came into existence;

7.3.3. AroFlo decides, in its absolute discretion, to discontinue the AroFlo System; or

7.3.4. AroFlo gives the Client three (3) months' notice of its intention to terminate.

7.4. The Client may terminate these Additional Terms by:

7.4.1. giving AroFlo thirty (30) days' notice in writing; or

7.4.2. giving AroFlo less than thirty (30) days' notice, but paying Monthly Fees for the remainder of such thirty (30) day period.

Any expenses, costs or disbursements incurred by AroFlo in recovering any outstanding monies including debt collection, agency fees and solicitors cost shall be paid by the client responsible for this account.

7.5. Upon termination or expiry of these Additional Terms, AroFlo may immediately terminate the Client's access to the Payment Gateway Functionality.

8. DISPUTE RESOLUTION

8.1. Any dispute or difference whatsoever arising out of or in connection with these Additional Terms shall, fourteen (14) days after notification is made of the dispute and in the absence of agreement to the contrary, be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules.

8.2. If a dispute or difference is not settled within thirty (30) days of the submission to mediation (unless such period is extended by agreement of the parties), it shall be and is hereby submitted to arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitrations.

9. FORCE MAJEURE

9.1. In the event of a Force Majeure, including for the avoidance of doubt the following situations:

9.1.1. any condition or reasonably unforeseeable event which prevents the performance by AroFlo of its obligations or which renders the

performance of such obligations so difficult or costly as to make such performance commercially unreasonable including, but not limited to:

- (a) war or warlike conditions, riot or civil commotion, terrorism, mobilisation insurrections;
- (b) import or export bans, blockades or embargoes;
- (c) statutory or union contract reductions in working hours, strike, lockout or other labour conflicts; and
- (d) natural catastrophe, earthquakes, storms, floods, fires, epidemic.

9.1.2. wholly or partially prevent or delay AroFlo from fulfilling its obligations under these Additional Terms, AroFlo shall:

- (a) use reasonable endeavours to resolve the Force Majeure as quickly as practicable, but shall not be liable to resolve any of the aforementioned labour conflicts on terms not reasonably acceptable to AroFlo; and
- (b) notify the Client of the Force Majeure incident, its likely duration and the period (in AroFlo's opinion) of any consequent delays or other relevant events, and the said dates will be so extended unless the Client disputes the delay period within seven (7) days of the receipt of the notice in which case the Parties shall consult in an endeavour to agree upon a satisfactory extension of time and failing agreement, within seven (7) further days, either Party may refer the matter to dispute resolution pursuant to clause 10.7 herein.

10. ADMINISTRATIVE PROVISIONS

10.1. Severability

If any provision (or a part of it) of these Additional Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or any part of it) of these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.

10.2. Notices

All notices or other communications under these Additional Terms shall be in writing and may be served personally, by pre-paid mail or by email to the address of each Party as disclosed by correspondence between the Parties in relation to these Additional Terms. Service shall be deemed to have taken place:

10.2.1. by personal delivery on the date of such delivery;

10.2.2. by pre-paid mail at the close of business on the second business

day after posting;

- 10.2.3. by email when the email is sent to the receiving party unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.

10.3. Assignment

- 10.3.1. The Client must not assign or deal with the whole or any part of their rights and/or obligations under these Additional Terms without the prior written consent of AroFlo.
- 10.3.2. Any purported dealing in breach of this clause has no effect.

10.4. Power, Rights and Remedies

Except as expressly stated to the contrary of these Additional Terms, the rights, powers and remedies of a Party under these Additional Terms are cumulative and are in addition to any rights, powers or remedies of that Party. Nothing in these Additional Terms merges, extinguishes, postpones, lessens or otherwise prejudicially affects any power, right or remedy that a Party may have at any time against the other Party to these Terms or any other person.

10.5. Waiver

Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to these Additional Terms does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right. A Party is not liable to any other Party for any loss, cost or expense that may have been caused or contributed to by the failure, delay, waiver or exercise of a power or right.

10.6. Relationship of Parties

These Additional Terms are not intended to create a relationship between the Parties of partnership, joint venture, agency or employer-employee. Nothing in these Additional Terms shall be construed to give any Party any right to enter into any commitments or incur liabilities on the part of the other Party.

10.7. Cost and Expenses

Each Party must pay its own costs and expenses (including legal costs and expenses) in relation to the negotiation, preparation and execution of these Additional Terms and any variation or replacement of these Additional Terms.

The Client agrees to pay any duty, taxes, registration and other fees (including fines and penalties) relating to the duty, taxes and fees which are payable in relation to these Additional Terms and any transaction contemplated by it.

10.8. Consents and Approvals

Where these Additional Terms provide that a Party may conditionally or unconditionally give or withhold any consent or approval in relation to any matter in these Additional Terms, that Party may in its

absolute discretion, and without being obliged to give reasons for doing so, withhold any consent or approval or give consent or approval conditionally or unconditionally.

10.9. Further Assurance

Each Party must from time-to-time and in a timely manner, do all things reasonably required of it by another Party to give effect to these Additional Terms.

10.10. Entire Agreement and Understanding

These Additional Terms supersede all prior undertakings, arrangements and agreements and constitutes the entire agreement between the Parties in relation to the subject matter of these Additional Terms and there are no conditions or other warranties affecting the Additional Terms between the Parties other than those set out in these Terms.

10.11. Governing Law and Jurisdiction

These Additional Terms are governed by the laws of Victoria and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria.

For any questions or notice, please contact AroFlo at:

AroFlo Pty Ltd atf The Guy and Lisa Arrowsmith Family Trust (ABN 28 742 128 107)
t/a AroFlo
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12 Maroondah Highway
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