

# Board Charter Smartpay Holdings Limited

## Registered Number 304625

30 April 2019

This Board Charter sets out the authority, responsibilities, membership and operation of the Board of Directors of Smartpay Holdings Limited (“the Company”). It is to be read in conjunction with the Constitution of the Company.

### 1. General Principles

The following paragraphs set out the general principles under which the relationship between the Board and its Committees are to operate, in order that the Company’s business can be conducted in the best interests of its shareholders, and with the proper sharing of responsibility between the Board and the Committees.

- 1.1** The Directors of Smartpay (“the Board”) acting together have the ultimate responsibility to the shareholders of the Company and for the management of the business of the Company and its subsidiaries (“the Group”), whatever the operating structure of the Group may be. So far as the Board is concerned, it must set the framework within which the business operates and, to an appropriate degree, oversee and supervise its operations.
- 1.2** As well as having the ultimate responsibility to its shareholders, the Board has statutory responsibilities and responsibilities under the listing rules and its constitution.
- 1.3** The Board cannot and must not try to manage the business itself, and must delegate this role to management. However, it must put in place procedures and structures, so that it can be satisfied that it is able to carry out its role of accepting ultimate responsibility.
- 1.4** The Board recognizes that the Company is the legal and beneficial owners of 100% of the paid up share capital of its Subsidiaries and undertakes to inform and consult with its subsidiaries of any intended decrease in that percentage holding. It is expected that the Subsidiaries conduct their business in accordance with the agreed strategies and budgets, forecasts and direction of the Company; the subsidiary companies remain accountable to the Board and the Board will monitor the subsidiaries activities.
- 1.5** The formal delegation of management authority is to the Managing Director or as designated by the board and this person(s) will be the prime source of information to the Board. Directors have, of course, the right to seek information from and question the Managing Director or designates. However, as Directors have the right of access to all information they might seek throughout the Company, they need to be able to question and discuss relevant issues with others as well, in appropriate ways and at appropriate times. Subject to keeping the Directors informed and listening to their counsel, it is for the Managing Director, acting within his delegated authority, to determine how the management of the Company is conducted, as the Managing Director must remain accountable.

*Smartpay reserves the right to amend, update or withdraw its corporate policies without prior notice.*

**ASX: SMP**  
**NZX: SPY**

**SHARE INFORMATION**  
Issued Shares: 238,284,963

**WEBSITES**  
[www.smartpay.co.nz](http://www.smartpay.co.nz)  
[www.smartpay.com.au](http://www.smartpay.com.au)  
[www.smartpayinvestor.com](http://www.smartpayinvestor.com)

#### **BOARD OF DIRECTORS**

Independent Chair:  
**Gregor Barclay**  
Managing Director:  
**Martyn Pomeroy**  
Independent:  
**Matthew Turnbull**  
Independent:  
**Geoffrey Carrick**  
Non-Executive:  
**Carlos Gil**

#### **REGISTERED OFFICE**

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## 2. Matters requiring authority of the Smartpay Holdings Limited Board

The following paragraphs set out the matters, which require Board action and are not, therefore, within the authority delegated to the Managing Director. The list is not exhaustive, there are other matters, which by law, the Listing rules or the Constitution need to be actioned by the Board of Directors.

- 2.1** Appointment and remuneration of, and delegation of authority to, Managing Director or designate and general approval of policies relating to sub- delegation.
- 2.2** All matters relating to the issue of securities of the Company and any subsidiary.
- 2.3** Proposed appointment and remuneration of Directors.
- 2.4** Approval for external borrowings
- 2.5** Guarantees of third parties
- 2.6** Adoption of annual business plans and budgets and development and approval of longer term strategic plans for the Group and its business.
- 2.7** Acquisition or disposal of any business or strategic investment not contemplated in an approved business plan and budget.
- 2.8** Approve and foster corporate values and culture - The Board will publish its corporate values and Ethics Policy and Code.
- 2.9** Any item of capital expenditure in excess of \$50,000 which has not been previously included in an approved budget.
- 2.10** Initiation of litigation where the costs would exceed \$50,000
- 2.11** Approval of all Accounts, Annual Report, Interim Report, Directors Reports and Financial Statements for release to shareholders and NZX.
- 2.12** Dividend policy.
- 2.13** Oversight of the audit and compliance functions; the approval of the framework of control and compliance and their operation.

- 2.14** Oversight and review of investment strategy and performance.
- 2.15** Oversight and review of remuneration policy within the Group.
- 2.16** Oversight and review of Health and Safety Management.
- 2.17** Oversight and review of risk management
- 2.18** Approve major decisions and, where appropriate, make recommendations to shareholders.
- 2.19** Require and monitor systems for keeping the market informed; approve announcements, prospectuses and reports to shareholders.

## 3. Nature and Extent Of Delegation

The following paragraphs set out the present delegation of authority and responsibility by the Board. They may be revoked or varied by the Board at any time.

- 3.1** The Board has delegated to the Managing Director the responsibility, and with that has granted him the freedom, to manage the business of the Group, save to the extent that Board action is needed as set out in Section 2 above. This power includes power to sub-delegate, and thus to manage the business with such people and organisational structures as he shall determine, after discussion so far as policy is concerned, with the Board.
- 3.2** Once the Board has approved the plans and budgets for a future period, the Managing Director need only seek further approval from the Board if he wishes to vary the plans, or take a step which is a matter requiring Board action.
- 3.3** The Managing Director will formalise delegations to executive team annually as part of the budget process; these delegations will be available to the Board for information.
- 3.4** The Managing Director will be accountable to the Board and will provide reports, proposals and such assurances as the board requires to confirm that any management limitations are being observed.

## 4. Board Structure

### 4.1 Membership

The Constitution provides that the number of directors must at any time comprise of at least three and no more than seven directors of whom at least two must be ordinarily resident in New Zealand. Subject to these limitations and the requirements of the NZX Listing Rules the number of Directors to hold office will be fixed from time to time by the Board.

The Board strives to ensure that it is comprised of directors with a blend of skills, experience and attributes appropriate to Smartpay and recognises that Directors with an independent perspective are more likely to constructively challenge each other and executives and thereby increase the board's effectiveness. When determining the independence of directors the Board will comply with the NZSX Listing Rules and looks to the guiding principle that an independent director means independent of management and free from any business or other relationship or circumstance that could materially interfere with the exercise of a director's objective and independent judgement.

It considers that in order to qualify as an independent director of Smartpay the director:

- Should not hold more than 5% of the company's listed voting shares
- Have not been employed in an executive capacity by the company in the last 5 years
- Are not principals or employees of a professional adviser to the company, whose billing exceeds 10% of its total revenues Are not significant suppliers or customers of the company, (whose billings exceed 10% of their total revenues,)
- Have no "material" contractual relationship with the company
- Have no other interest or relationship that could interfere with their ability to act in the best interests of the company and independently of management
- Are not members of the management of the company's subsidiaries
- The board determines that the directors are independent in character and judgement

The Board will consider the independence of its directors:

- Immediately prior to the publication of the annual report in order that it can make the relevant disclosures in the Annual Report

- In its deliberations regarding Board composition prior to the Annual Meeting of Shareholders in order that it can consider the balance of skills and experience on the Board and make recommendations to shareholders regarding the election or re-election of directors
- Prior to the appointment of any new director to the Board

The Board acknowledges that a change in a director's independent status is material and will be disclosed under its continuous disclosure requirements.

The Board will appoint the Chairman from one of its independent directors.

### 4.2 Director orientation and education

Smartpay recognises that a well formed induction process should provide a newly appointed director with information about the company, its operations, governance systems and all other details necessary to enable the director to be effective in their role within the shortest practicable time.

To this end the Company has developed an induction framework which ensures newly appointed directors, whether a first time director or experienced director, are appropriately equipped to perform their role and add value to the Board. Directors are expected to keep themselves abreast of changes and trends in the Business and in the Company's environment and markets, and to keep abreast of changes and trends in the economic, political, social and legal climate generally. It is expected that all directors will continuously educate themselves to ensure that they may appropriately and effectively perform their duties. In addition, visits to specific Company operations, when appropriate, and briefings from key executives and industry experts will be arranged.

The Board will maintain corporate membership of the NZ Institute of Directors to facilitate access to role specific training and support services.

### 4.3 Board and Director Evaluation

Smartpay strives to provide an environment where all members of the Smartpay Team understand the impact their contributions have on the achievement of business goals and are provided the opportunity for ongoing personal growth. This is accomplished through a strong performance based management process which is continuous and includes an annual performance review and the Board has approved a Performance Management Policy which applies to the whole organisation including the Board and individual directors. It has also established a Board Performance Review Framework under which the the Board annually evaluates its own performance, and its own processes and procedures, including those of its Board Committees, to ensure they are designed to assist the Board in effectively fulfilling its role. It has approved a formal performance review framework to manage this process.

## 5 Operating In Practice

The following paragraphs set out, in general terms, the way in which it is intended that the Board will relate to subsidiary Boards in practice, and how in practical terms, it will carry out its role. It will operate as a board, and will also delegate certain powers to Committees or sub-committees. At present the committees will be:

Audit and Finance Committee  
Remuneration and Nominations Committee

These committees operate under Board approved Terms of Reference, they have no decision-making powers and may only make recommendations to the Board unless otherwise instructed by the Board.

### 5.1 The Board Itself

5.1.1 The Constitution provides that the directors may fix the quorum for meetings from time to time, and unless it has been so fixed the quorum will be three directors. The Board has determined that the quorum will be three directors.

5.1.2 The Board will meet generally six times a year (or more often as required) to review its operations and performance. The Managing Director or board designate will be responsible for the overall management of the business to be presented at board meetings. The Managing Director will liaise with the Chairman who is responsible for running the meeting and to ensure that the business is properly dealt with, and that the Directors have every opportunity to carry out their own responsibilities at the meeting.

5.1.3 The Managing Director will at each meeting inform the Board of all matters, and raise for discussion all issues, of which, in carrying out their roles, the Directors should be aware, and on which they should be entitled to express a view. He will speak about key strategic questions, which are being considered, so that the Directors can give early thought to matters of importance. As well, the Directors should be made aware of any matters which are likely to come into the public arena, and of any matters of material concern which may be likely to adversely or favourably affect the business or the Group. There should be no surprises, to the extent that it is possible to avoid them.

5.1.4 The business of the Board over the year should include:

Consideration and approval of plans and budgets, and forward strategic plans and estimates.

Consideration and approval of proposed variations of a material nature to approved plans and budgets.

Consideration, at each scheduled meeting of a report from the Managing Director. This report will concentrate on material variations from plan and budget, including as

precise explanations as possible. It will also deal with progress on matters identified as key areas of risk and importance: trends in key areas will be important.

Consideration, at each scheduled meeting, of a finance report which, while providing all the information which a Director particularly interested in the detail might want, concentrates on trends against approved budgets, including explanations for these trends.

Consideration of all matters which arise and which require action of the Board, including accounts and reports, financing matters, dividend decisions and reports of, and decisions arising from deliberations of all committees.

5.1.5 All Directors have an obligation to inform the Board, through the Chairman, of any matter which has come to their attention, and of which the Directors should, but may not otherwise become aware.

5.1.6 Directors' Indemnity Directors are indemnified under the Deed of Indemnity entered into by the Company which indemnifies directors to the maximum extent permitted by the Companies Act 1993. In addition the Company takes up Directors and Officers insurance on behalf of the Board.

5.1.7 Proceedings of the Board Section 35 of the company's constitution 'Proceedings of the Board' sets out the company's rules with respect to board meetings.

### 5.2 Company Secretary

The Company Secretary will be secretary to the Board. The Company Secretary will be accountable directly to the Board, through the chairman, on all matters to do with the proper functioning of the board. Each director has direct access to the Company Secretary and visa versa. The Company Secretary will keep minutes of board meetings that accurately reflect the board discussion.

### 5.3 Directors Obligations

5.3.1 General Responsibilities The primary responsibility of the directors is to exercise their business judgment to act in what they believe to be the best interest of the Company and its shareholders. In discharging that obligation directors should be entitled to rely on the honesty and integrity of the Company's senior executives and its outside advisors and auditors.

5.3.1.1 Conflicts of Interest Directors should avoid conflicts of interest so far as possible. Where a conflict or potential conflict arises, at a minimum they must disclose it and adhere scrupulously to the procedures provided by law and by the constitution of the company for recording and dealing with conflicts and ensuring the company obtains fair value. Directors who are conflicted regarding a particular issue should absent themselves from discussion and

decision-making relating to that issue. A director who has a continuing conflict of interest of a material nature, that cannot be satisfactorily resolved after consultation with the Chairman and Audit and Finance Committee, should consider resignation as a director in particular where the material continuing conflict of interest prejudices his or her ability to contribute to the affairs of the board to the same extent as the other directors.

#### 5.3.1.2 Shareholdings of Directors, Buying and Selling of Securities

Directors are encouraged to hold shares in the Company; when buying or selling shares, Directors must strictly observe the provisions of the Company's Constitution, the Company's own internal rules and all relevant legislative or regulatory procedures. The company has in place an approved procedure for the buying and selling of securities in the company by directors or their relatives or associates. Directors should not engage in short term trading in the company's securities. Directors should notify the board in advance of any intended transaction by them or to the best of their knowledge their relatives or associates involving shares or securities in the company and comply with the approved procedure.

5.3.1.3 Confidentiality Directors must observe the confidentiality of non public information disclosed to them as directors and not disclose it to any other person without the authority of the board. A director who is nominated by, or has a special allegiance to, a particular shareholder or group of shareholders or other stakeholders, may only disclose confidential information to the nominating shareholder or other stakeholder with the authority of the board and in compliance with any procedures prescribed by law or the constitution of the company.

5.3.1.4 Directors must act in good faith and generally in the best interests of the company Company directors have a fiduciary duty to act in good faith and generally in what they believe to be the best interests of the company. Directors have a duty of care, diligence and skill requiring them to be active and inquiring in the conduct of their duties. Directors should consistently attend board meetings and devote sufficient time to make and keep themselves familiar with the nature of the company's business and the environments in which it operates. Directors also have a duty not to act recklessly by permitting a company to carry on business in a way likely to result in substantial loss to creditors, or to incur an obligation unless the company can perform against it.

5.3.1.5 Comply with the spirit and letter of the law Directors must exercise their powers for a proper purpose. They should understand the reasons powers have been conferred on them and limits within which those powers can be exercised. Directors must be aware of and comply with the obligations imposed on them and their companies by applicable law, regulation and the company's constitution and ensure that all requirements are met both in form and substance.

Directors should also ensure general adherence by their companies to applicable codes, such as the NZX Corporate Governance Best Practice Code. However, directors may adopt and disclose robust alternatives to specific code standards where good reasons exist.

### 5.3.2 Individual Responsibilities

#### 5.3.2.1 Chairman

Responsible for fostering a constructive governance culture and applying appropriate governance principles among directors and with management

Responsibility for the efficient functioning of the board and sets the agenda for board meetings, usually in conjunction with the managing director.

Primary responsibility for ensuring that all directors receive sufficient and timely information to enable them to be effective board members.

Responsibility for the balance of Board membership and to bring about changes in Board membership.

Responsible for chairing Board and shareholder meetings and for the signature of approved minutes and resolutions.

Overview of process of board and individual director performance evaluation

#### 5.3.2.2. Managing Director

Responsibility to ensure all relevant items are on the agenda at board meetings in liaison with Chairman and that agendas are distributed in a timely manner with sufficient supporting information

Business promotion and management

Board delegated responsibility, and with that has granted him the freedom, to manage the business of the company, save to the extent that Board action is needed as set out in the board's terms of reference

Power to sub-delegate, and thus to manage the business with such people and organisational structures as he shall determine, after discussion so far as policy is concerned, with the Board.

Once the Board has approved the plans and budgets for a future period further approval only sought from the Board if he wishes to vary the plans, or take a step which is a matter requiring Board action as set out in the board's terms of reference.

- Responsibility for the creation and implementation of the Health and Safety Management plan for the business, including the allocation of expenditure in annual budgets and forecasts.

### 5.4 Committees of the Board

The board of Smartpay Holdings Limited has constituted two committees to provide specific input and guidance; it recognizes that committees add to the effectiveness of the board by being able to inject a more detailed analysis of key issues and promote efficient decision making. The two committees are the Audit and Finance Committee and

the Remuneration and Nominations Committee. These committees meet and operate under the terms of reference set out below which are reviewed and approved by the board annually. Each committee is empowered to seek any information it requires from employees and to obtain independent legal or other professional advice it may deem necessary.

5.4.1 **Audit and Finance Committee** Directors are responsible for financial reporting and auditors are responsible for expressing an independent opinion on the financial statements. The Board carries out this responsibility through a committee of the Board. The board as a whole reviews the committee's work; such a process both adds objectivity to the audit and allows meetings of the full board to concentrate on major performance issues. The Board approved Terms of Reference are contained in a separate document. These terms of reference are reviewed by the Audit and Finance Committee in accordance with its annual timetable and recommendations for change are made to the full Board for approval.

5.4.2 **Remuneration and Nominations Committee** The Board approved Terms of Reference are contained in a separate document. These terms of reference are reviewed by the Remuneration and Appointments Committee in accordance with its annual timetable and recommendations for change are made to the full Board for approval.

## 6 Other Corporate Governance Matters

The following miscellaneous matters are set out for completeness, so far as the Board's operations are concerned.

- 6.1 Both Non-Executive and Executive Directors have the same rights and responsibilities in their capacities as Directors as each other, and the Board must act as a whole when it is acting as a Board.
- 6.2 To allow the Non-Executive Directors to carry out this particular role, they should meet separately from the Executive Directors from time to time, when the Chairman or any one of them thinks that such a meeting is desirable, and at least once a year. These meetings are not meetings of the Board and cannot make decisions.
- 6.3 In performing their role, the Board should be mindful of its obligations of disclosure and the need to promote investor confidence and accordingly will adhere to its Disclosure and Communications Policy.

6.4 The Directors will have the right, while they remain directors, and for 12 years after they cease to be directors, to have access to all documents which have been presented to meetings of the Board, or made available to directors in relation to their position as directors.

6.5 The Directors shall have the right, with the prior approval of the Chairman or a resolution of the Board, to seek legal or financial advice on any matter, which is either put forward for decision of the Board, or relevant to their positions as Directors. This will be at the expense of the company.



**Signed by Gregor John Barclay**  
**For and on behalf of the Board of Smartpay Holdings Limited**  
30 April 2019