



smartpay subscriptions limited  
secured bulk funding facility

# important information

This information memorandum, which is dated October 2010, relates to a secured bulk funding facility established by SmartPay Subscriptions Limited (“SSL”).

This information memorandum contains important information and should be read in its entirety. Without in any way limiting the foregoing, prospective lenders should refer to the section titled “Risks” on page 24 and the section titled “FAQs” on page 27. Prospective lenders should also note that other important information about the Facility and the Offer is available in the Loan Agreement, the Facility Deed and the Security Trust Deed. Copies of these documents can be obtained from SmartPay Limited at 182-190 Wairau Drive, Glenfield, (PO Box 100490 North Shore Mail Centre, North Shore City 0745, Att: Chief Financial Officer).

## Definitions

Certain capitalised terms used in this information memorandum have defined meanings which appear in the Glossary section on page 29. All references to \$ are to New Zealand dollars unless specified otherwise.

## Eligibility and qualification of investors

The Offer is only open to parties with a minimum investment of \$500,000 which means the Offer falls outside the requirements of the Securities Act 1978 and the deposit taker provisions of the Reserve Bank of New Zealand Act 1989.

## Restricted Offer

This information memorandum is neither a prospectus nor an investment statement for the purposes of the Securities Act 1978 and does not contain all of the information which would be required to be included in such documents if the Offer were an offer of securities to the public in New Zealand.

This information memorandum does not constitute an offer of securities in any jurisdiction other than New Zealand. No action has been taken by SSL, any member of the SmartPay Group or any other person to permit the Offer to be made, or to permit possession or distribution of any offering material relating to the Offer, in any country or jurisdiction (other than New Zealand) where action for that purpose is required. No person may participate in the Offer, or have in its possession or distribute to any person any offering material or any documents in connection with the Offer, in any jurisdiction other than in compliance with all applicable laws and regulations.

By entering into a Loan Agreement, each Lender agrees to indemnify SSL, SmartPay, the Manager and the Security Trustee and each of their respective directors, officers, employees and agents for any loss or liability sustained or incurred by them as a result of a breach by that Lender of the above selling restrictions.

## Disclaimers

This information memorandum does not constitute a recommendation by the Security Trustee, the Manager nor any of their respective directors, officers, employees or agents to enter into a Loan Agreement or otherwise lend money to SSL. None of the Security Trustee, the Manager or any of their respective directors, officers, employees or agents accepts any liability whatsoever for any loss arising from this information memorandum or its contents or otherwise arising in connection with the Facility or the Offer.

The Manager and the Security Trustee have not independently verified the information contained in this information

memorandum. Each recipient of this information memorandum acknowledges that none of the Manager, the Security Trustee nor their respective directors, officers, employees, agents or advisers gives any warranty or representation (express or implied) of accuracy or reliability of this information memorandum and they take no responsibility for this information memorandum. None of them shall have any liability (including for negligence) for any errors or omissions in this information memorandum, and each recipient waives all claims in this regard.

Each recipient of this information memorandum must make such independent assessment of the financial condition and affairs of SSL and the SmartPay Group as it considers necessary and must base its investment decision upon such independent investigations.

## Tax

You should obtain your own tax advice in connection with the entry into a Loan Agreement and participation in the Facility.

## No obligation to accept offer of loan funding

SSL reserves the right to evaluate any completed Loan Agreement received. No Loan Agreement will be binding on SSL until such time as SSL has executed the same. SSL is under no obligation to execute and enter into a Loan Agreement with any person. SSL will not be liable to compensate any prospective lender for any costs or expenses incurred in reviewing, investigating or analysing any information in relation to SSL and the SmartPay Group, in submitting a completed Loan Agreement, or otherwise.



# contents

Background	4	Directors' Profiles	19
Merchant Infrastructure Diagram	6	Security Trustee Profile & Role	20
The Opportunity/Offer	7	Manager Profile & Role	22
Investment Opportunity Business Model	9	Risks	24
SmartPay Subscriptions Limited Process	10	Frequently Asked Questions	27
About MIPS	11	Glossary	29
The Specifics of the Offer	12	Terms & Conditions	30
SmartPay Recent History	16	Directory	31



## background

SmartPay is a listed company on the New Zealand Stock Exchange (“NZX:SPY”). Its shares have been trading on the NZX since May 2006. As an integrated merchant services provider, the SmartPay Group markets a range of products and services that provide merchants with the ability to increase revenues, reduce costs and/or enhance their operational environment in order to build revenue and attract more customers.

### These products and services include:

- Equipment such as EFTPOS terminals and pin pads
- Internet payments gateway
- Telecommunications such as Wi-Fi, voice over IP and broadband
- Marketing media such as in-store radio and digital signage
- Value added services including prepaid mobile phone top up, gift cards, loyalty programmes and third party card processing.

In many cases the underlying transactions from the various services provided are routed via SmartPay’s own telecommunications network to SmartPay’s host/computer systems, where SmartPay charges for any additional processing and delivery to customers. This generates additional ongoing revenue for the delivery of transactions to third parties. In particular, the SmartPay Group provides the majority of non-financial transactional processing for the New Zealand taxi industry as well as a growing base in Australia, plus

prepaid top up services for mobile phones and electricity retailers as well as calling cards and similar prepaid products. In addition the SmartPay Group provides gift card programmes and telecommunications services, third party non-financial card processing services, and connects “older” style dial up EFTPOS terminals into the broadband/internet networks.

The SmartPay Group has been successful in selling its services to a wide range of merchants across Australasia and now has

a database of some 30,000 customers to whom it has sold goods or provided services or with whom it has entered into a subscription agreement. This database is a combination of both SMEs (smaller independent merchants) and a number of New Zealand’s largest corporates.

The SmartPay Group offers its services by way of a contracted “subscription agreement” which requires the merchant to pay a minimum monthly fee for the services provided. SmartPay’s smaller customers enter into a fixed term contract for between 36 - 60 months, with monthly rentals ranging between \$51 and \$70 for a range of services. Each subscription agreement with a 36 month term therefore has future cash flows ranging between \$1,836 and \$2,520. Payment is via direct debit directly into the bank account of the relevant member of the SmartPay Group.

For larger corporate customers the SmartPay Group operates a “flexi-rent” agreement which allows the customer to vary the number of units by up to 10% over the term of the contract. The SmartPay Group calculates the

monthly rental with payment by direct debit or via internet banking. The value of corporate contracts range between \$200,000 and \$1,500,000 spread over terms of between 36 and 60 months.

These agreements are based on certain pro forma agreements which have been subject to legal review. Subject to its express terms and to applicable exceptions of law, each agreement commits the merchant to continue to pay for the relevant services, at the agreed price, for the term of the agreement. The subscription agreements include provisions that ensure that the relevant member of the SmartPay Group can assign its rights under the agreements to any third party, that it continues to own the hardware provided by it under the agreement and that the merchant both insures and protects the hardware provided.

These subscription agreements are managed by SmartPay's 100% owned subsidiary MIPS Financial Services Limited ("MIPS"), which remains operationally separate of the SmartPay Group's sales business.

The subscription agreements provide a reliable and consistent cashflow over the term of the contract. At the end of the contract term the merchant is contacted to resign for a further term, providing the opportunity for an ongoing, renewable and reliable revenue stream.

To fund its business, the SmartPay Group enters into financing agreements with various financiers and allocates subscription agreement cash flows (being the monthly rental payments over the contract term of subscription agreements, which may include a combination of both corporate, or independent merchants) as security for funding advanced by the relevant finance companies.

SmartPay has current funding relationships with FE Investments Limited and Finance Now (Subsidiary of Southland Building Society) for the provision of these funding lines on a ratio that ensures that a minimum of 20% equity is maintained in the funder book.

A major EFTPOS terminal upgrade is currently being undertaken in New Zealand with all 5.1 specification EFTPOS terminals needing to be upgraded to 6.0 specification by June 2011 in order to process transactions using card "chip" technology currently being used overseas. It is estimated that there are approximately 60,000 EFTPOS terminals in New Zealand that will need to be upgraded. Due to the current and anticipated growth resulting from this upgrade, plus the extended customer base acquired by the SmartPay Group as a result of the purchase of the Provenco Cadmus payments division in August 2009, the SmartPay Group is now looking to attract investors to lend funds to a wholly-owned Special Purpose Company called SmartPay Subscriptions

Limited ("SSL"). SSL will use these funds to purchase subscription agreements from the relevant members of the SmartPay Group and the cash flows, assets and security of the subscription agreements purchased will provide security for the funds advanced. Due to the nature of the subscription agreements and the resulting reliable and contractually committed cash flows, SSL and SSL's funders will benefit from a secure and reliable ongoing source of funds, with a relatively low risk profile.

SSL will purchase subscription agreements from the relevant members of the SmartPay Group at not more than 80% of the future cashflow payments under the subscription agreements e.g. SSL will spend \$80 to acquire subscription agreements with aggregate future cash flows of \$100.

Additionally, should the merchant default, SmartPay can either recover the hardware, turn off the services and/or undertake a recovery of the outstanding amounts. See the FAQ's section on page 27 for further explanation of this.

Once the software has been installed in the EFTPOS terminal, there is little need to revisit the software until the contract term has expired. In the case of EFTPOS only contracts, there is a link between the software operating in the terminal and the bank's EFTPOS switch (Paymark or ANZ) meaning that the ongoing operation of the terminal is not impacted if SmartPay ceases to exist for any reason.

# merchant infrastructure

SmartPay provides services to its customer base with recurring and repeatable revenue streams – using broadband as a delivery mechanism

store



secure networks





## the opportunity/offer

SmartPay, via a Special Purpose Company called SmartPay Subscriptions Limited (“SSL”), wishes to offer potential investors the opportunity to become a joint funder of SSL

# the opportunity/offer (continued)

SmartPay, via a Special Purpose Company called SmartPay Subscriptions Limited (“SSL”), wishes to offer potential investors the opportunity to become a joint funder of SSL with investments being secured by way of:

- a first ranking security over the property and assets of SSL (by virtue of a general security deed); and
- specific security over the subscription agreements acquired by SSL (including the future cash flows and hardware the subject of those agreements).

An unsecured guarantee will also be provided by SmartPay Limited, the parent company of the SmartPay Group.

Direct application is welcomed from New Zealand residents who wish to invest a minimum of \$500,000. Funds advanced will be held by SSL, under the control of an independent manager, until such time as suitable subscription agreements are available for purchase by SSL. The independent manager will have signing authority over SSL’s bank account and will only authorise the payment of funds from SSL’s bank account to purchase subscription agreements contemporaneously with the assignment of such agreements to SSL. Interest will be paid to an investor at the contracted rate from the time that the investor’s funds are deposited into SSL’s bank account (regardless of whether or not the funds are immediately used to purchase subscription agreements).

The objective is to ensure that SSL has access to funds on a weekly basis to purchase contracts (in bulk) as they are signed by the SmartPay Group sales teams.

Covenant Trustee Company Limited has agreed to hold the security as security trustee on behalf of all Lenders. Further, Chartered Accountants Carlton DFK have agreed to provide management services in connection with SSL and the Facility. For further information on Covenant Trustee Company Limited and Carlton DFK and their respective roles as security trustee and manager refer to pages 20 and 22 below.

MIPS Financial Services Limited, (“MIPS”), a wholly-owned subsidiary of SmartPay, will administer the agreements assigned to SSL with Carlton DFK undertaking the role of Manager to ensure that the security ratios are met with respect to subscription agreements purchased by SSL. For further information on MIPS refer to pages 10 and 11 below.

As the SmartPay Group conducts business in both New Zealand and Australia, SSL may purchase contracts relating to its Australian operations as well as its New Zealand operations.

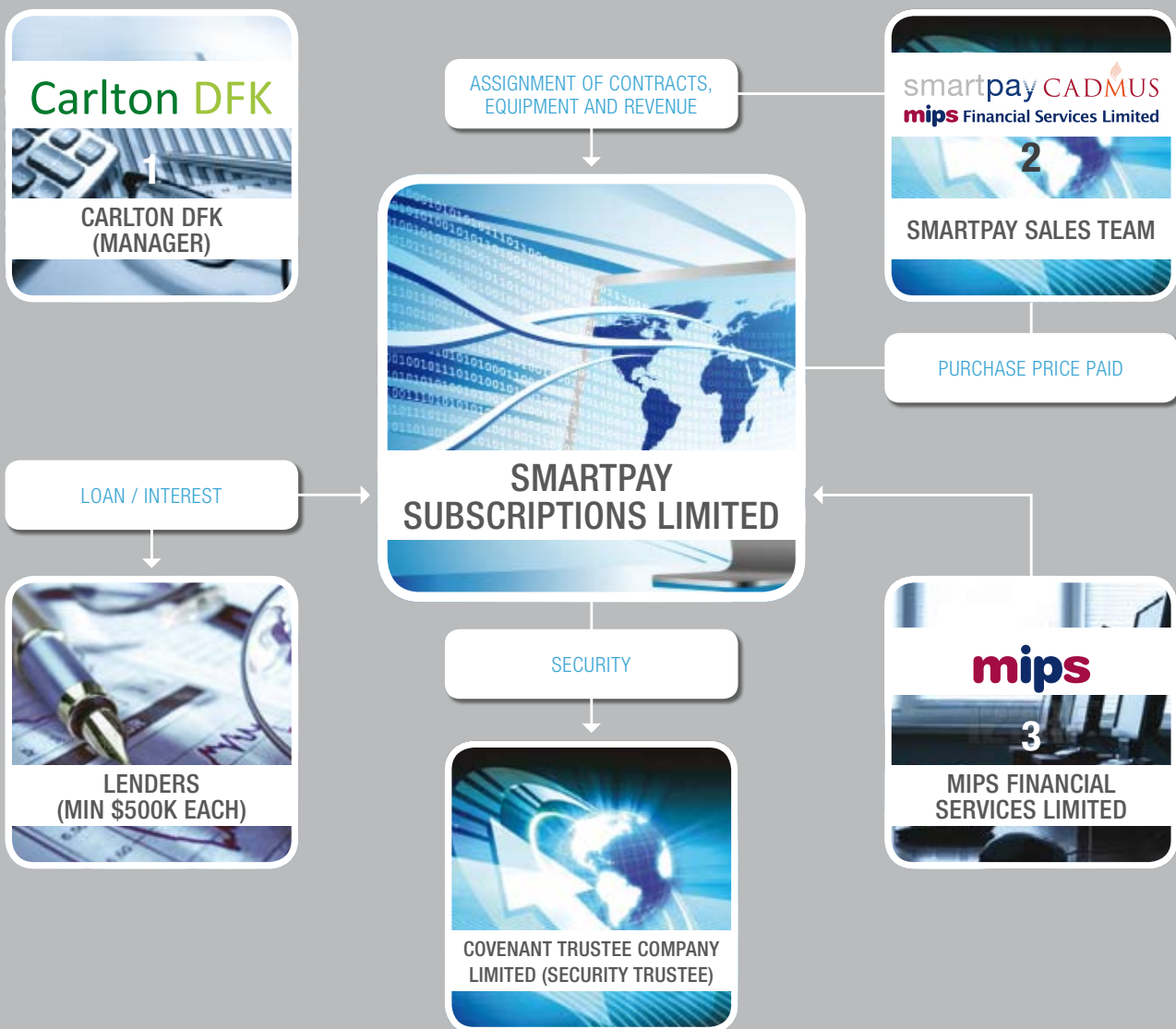
## Process

If you wish to participate in the Offer you should complete and execute the Loan Agreement and forward the same, together with a cheque made payable to “SmartPay Subscriptions Limited” (and crossed “non-transferable”) for the loan amount (which must not be less than \$500,000), to Carlton DFK at Private Bag 99945, Newmarket, Auckland 1149.

SSL will have 15 days in which to accept the offer of loan funding by countersigning the Loan Agreement, at which time the Manager will deposit the cheque for the loan amount into SSL’s bank account (being the account over which the Manager has signing authority). The funds will be held in SSL’s bank account and will be applied for the purpose of purchasing subscription agreements from the relevant members of the SmartPay Group. Interest will accrue on each Loan from the time that the loan amount is deposited into SSL’s bank account regardless of whether the funds have then been applied to the purchase of subscription agreements by SSL.

If SSL does not accept a prospective lender’s offer of loan funding (by countersigning the Loan Agreement and depositing the cheque for the loan amount into SSL’s bank account), SSL will return the cheque to the prospective lender by ordinary post at the address specified by the prospective lender in the relevant Loan Agreement submitted by them. No interest will be payable by SPP in such event. Prospective lenders accept the risk associated with the return of a cheque in this manner.

# investment opportunity **business model**



1. The Manager has signing authority over SSL's bank account, authorises the payment of funds from SSL's bank account for the purchase of contracts and coordinates payment of interest and principal to Lenders out of such account.
2. The relevant SmartPay Group entity will likely be MIPS Financial Services Limited (as regards the majority of SME merchant subscription agreements) or SmartPay Cadmus Limited (as regards flexi-rent contracts entered into with corporate customers).
3. MIPS Financial Services Limited will manage all of the relevant subscription agreements on behalf of SSL.

# the smartpay subscriptions limited process

On a weekly basis, and following a number of administration procedures including credit checks and credit assessments, relevant subscription agreements will be processed, allocated and assigned to SSL.

An invoice, using the ratio agreed, is raised and relevant assignment documents completed. SSL will advance against that invoice and provide funds to the relevant member of the SmartPay Group. The relevant subscription agreements, the underlying hardware assets, and the cash flows attached to the agreements will all be assigned to SSL. MIPS will manage the relevant subscription agreements on behalf of SSL and will collect the monthly contract rentals on behalf of SSL and deposit the same into SSL's bank account on a monthly basis.

By default, as each batch of contracts is assigned to SSL, the difference between the amount paid and the full face value of the future cash flows provides, in effect, "equity" in SSL. At the end of each quarter SSL will ensure that the ratio of future cashflows under the subscription agreements plus the cash in SSL's bank account to the aggregate amount owed by SSL to all Lenders under the Loans is not less than 1.2:1. To the extent that the ratio is less than 1.2:1 the relevant members of the SmartPay Group will be required to assign additional subscription agreements to SSL to ensure that the required ratio is met.

The Security Trustee holds the security granted over SSL as administrative agent on behalf of the Lenders pro rata to their respective participating interests (i.e., pro rata to their respective principal invested). The security comprises a first-ranking general security over the present and after-acquired property of SSL as well as specific security over the subscription agreements (and their associated cash flows and hardware) purchased by SSL. The Security Trustee has the ability to take steps to enforce the security on behalf of the Lenders if it is notified that SSL is in default of its obligations (including its obligations under the Security Trust Deed and its obligations to Lenders under the Facility Deed and the Loan Agreements) or that any other Event of Default has occurred.

Carlton DFK as Manager has the responsibility of ensuring that funds advanced by Lenders are properly receipted into SSL's bank account and that funds are only authorised for release from that account to:

- a. purchase subscription agreements from the relevant members of the SmartPay Group (once the relevant assignment documentation has been properly executed); and

- b. pay interest and principal to investors in accordance with the terms of the Facility Deed and the Loan Agreements.

The functions and duties of the Security Trustee and Manager are set out more fully on pages 20 and 22 below.

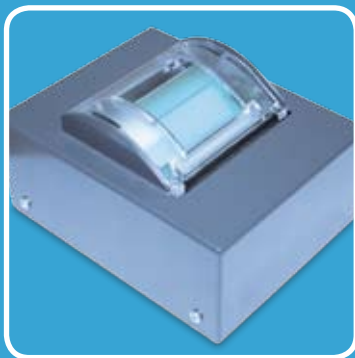
## Contract management

The management of the individual contracts purchased by SSL remains with MIPS. A Lender has no need to be involved in any aspect of the operation or management of the contracts, however, a Lender can request from the Manager copies of the quarterly reports required to be provided by SSL to the Manager under the terms of the Facility Deed.

MIPS collects payments from the relevant customers on a monthly basis and, via a bank standing order, pays the amounts collected directly into SSL's bank account (from which funds can only be dispersed with the authority of the Manager).

Since October 2007 MIPS has written off as bad debts 18 contracts with a value of approximately \$42,000 due to customer defaults which equates to 0.3% of the finance receivables as at 30 September 2010. As at 30 September 2010 there are doubtful debts in relation to 59 contracts with a value of approximately \$90,000 which equates to 0.65% of finance receivables as at 30 September 2010. As at 30 September 2010 arrears and customer defaults (excluding doubtful debts) are below 2% of the total contracts managed by MIPS.

MIPS and SSL have entered into a Contracts Management Agreement setting out the terms on which MIPS is to manage the subscription agreements purchased by SSL. Under the terms of the Contracts Management Agreement MIPS is required to manage the agreements on behalf of SSL to the highest standard of accepted servicing practice and is required to exercise a high degree of skill and care in performing its management functions. SSL is able to terminate the Contracts Management Agreement at any time on one month's notice in writing to MIPS.



## about mips financial services

MIPS is a wholly owned subsidiary of SmartPay, and provides operational support for the management of subscription agreements entered into by the SmartPay Group's sales staff.

As outlined, these agreements contractually commit the merchant to a fixed monthly payment over a fixed term, providing regular and reliable cash flows that can be used to offer investors a secure high interest investment opportunity. At the end of each agreement term the SmartPay Group will endeavour to resign the customer for a further term, or alternatively extend the term of the current agreement.

MIPS has a separate management team, reporting directly to the Managing Director of SmartPay with a separate Subscription Agreement Management system called Finpower, which is an industry standard package specifically designed to manage subscription agreements of the nature entered into by the SmartPay Group.

MIPS currently manages all customer subscription agreements entered into by the SmartPay Group, regardless of whether they are internally or externally funded.

# the specifics of the offer

The Offer is open to New Zealand residents who wish to make an investment of \$500,000 or more. Under no circumstances will SSL enter into a Loan Agreement for an amount of less than \$500,000.

## The borrower

SSL will be the borrower and will use the funds advanced to it to purchase subscription agreements from the relevant members of the SmartPay Group. Carlton DFK, as Manager, will have signing authority over SSL's bank account and will authorise payments from the bank account to purchase subscription agreements once it is satisfied that the relevant subscription agreements exist and that the assignment documentation has been properly executed. Carlton DFK will also make payment of interest and principal from SSL's bank account in accordance with the terms of the Loan Agreements. Notwithstanding the foregoing, the obligation to make payment of interest and repayment of principal to investors falls on SSL. The Manager does not in any way guarantee the payment of interest or the repayment of principal to Lenders.

SSL will grant the Security Trustee first ranking general security over all of its assets as well as specific security over the subscription agreements purchased by SSL from the relevant members of the SmartPay Group. This security will be held by the Security Trustee as security trustee and administrative agent for the Lenders pro rata to their participating interests and in accordance with the terms of the Security Trust Deed. As with the Manager, the Security Trustee does not guarantee the payment of interest or the repayment of principal to Lenders.

SSL will purchase subscription agreements from the relevant members of the SmartPay Group at no more than 80% of the face value of the future cash flows under those subscription agreements. As each batch of agreements is purchased by and assigned to SSL, the difference between the amount paid by SSL and the total face value of the relevant contracts represents "equity" in SSL.

Over the next 12 months there is a significant opportunity for the SmartPay Group to participate in the compulsory upgrade of approximately 60,000 EFTPOS terminals (required to meet new New Zealand banking security standards). The SmartPay Group will need to have a very flexible contract formation process

enabling it to be very aggressive in the buy-out of contracts from third party finance companies on longer terms and variable rental rates. This may result in both on-line and call centre based sales contracts that do not include a customer signature but have other mechanisms for customer identification and confirmation of acceptance of contract terms. SmartPay is already a preferred Direct Debit initiator, via BNZ, and has been advised it can now access the "BNZ Paperless DD" service as well.

SmartPay has received legal advice to the effect that, subject to the usual exceptions and limitations, the pro forma subscription agreements used by members of the SmartPay Group and the online contracts formation process established by SmartPay create legally binding and enforceable obligations on the customers in accordance with their terms.

## Commercial terms

The interest rate and term for each loan is specified in the relevant issue flyer. The term will range from 12 months to 60 months.

The loans are 'interest only' and repayable to the Lender in one lump sum at the end of the term. Interest (net of any applicable withholding taxes) will be paid to the nominated bank account of each Lender monthly in arrears on the last business day in each month. Interest will be calculated on a daily basis and on the basis of a 365 day year.

The applicable interest rate is fixed for the term of the Loan.

SSL is entitled (but is not obliged) to make voluntary early repayment (either in whole or in part) of principal to any Lender(s) during the term of the relevant Loan(s) provided that any part repayment of principal must be of an amount of not less than NZ\$50,000 and in integral multiples of NZ\$10,000. SSL is free to make an early repayment with respect to any Loan and any repayment made by SSL with respect to a Loan will not bind SSL to make any further early repayment with respect to that Loan or any early repayment with respect to any other Loan. An early repayment

by SSL of all or part of a Loan will not confer on any Lender any additional rights as against SSL. Interest will cease to accrue on the relevant principal from the date of any such early repayment.

SmartPay Limited, the parent company of the SmartPay Group, the shares in which are listed for trading on the NZSX, acts as guarantor of SSL's obligations to Lenders and the Security Trustee can call on SmartPay Limited to make payment of interest and principal to Lenders if SSL fails to do so.

## Covenants and operational controls

The Facility Deed, Security Trust Deed and associated security documents impose a number of operational controls, covenants and reporting requirements on SSL and SmartPay Limited as guarantor. The key financial controls relate to the subscription agreements purchased by SSL (being the main asset of SSL). In particular they provide that:

- a. The ratio of future cash flows under the subscription agreements plus cash in SSL's bank account to the aggregate amount owed by SSL to all Lenders must not be less than 1.2:1.
- b. The number of subscription agreements held by SSL which are in default must not be more than 5% of the number of subscription agreements held by SSL; and
- c. The dollar value of the future cash flows of those subscription agreements in default must not exceed 5% of the aggregate future cash flows of all subscription agreements held by SSL.

A subscription agreement will be in "default" if the relevant customer is in arrears by 90 days under the agreement.

If the above covenants are not met as at the end of each quarter, then SSL will be required to acquire additional subscription agreements in order to rectify the covenant breach.

## The security

The Security Trustee holds the security granted by SSL as security trustee on behalf of the Lenders. The Security Trustee holds:

- a. First-ranking general security over the present and after-acquired property of SSL (which will include all undistributed loan advances held in SSL's bank account); and
- b. Specific security over the subscription agreements purchased by SSL (including the future cash flows and hardware the subject of those agreements),

as security trustee and administrative agent for the Lenders pro rata to their participating interests. (i.e. pro rata to the amount owed to each Lender).

In addition to the security referred to above the Lenders will benefit from an unsecured guarantee from SmartPay Limited, the parent company of the SmartPay Group. As with the security referred to above, the benefit of this guarantee will be held by the Security Trustee as security trustee and administrative agent for the Lenders.

A Master Deed of Assignment has been entered into between each relevant member of the SmartPay Group and SSL governing the terms on which subscription agreements and associated hardware will be assigned to SSL. Under the terms of these agreements MIPS will remain liable for managing the contracts and collecting the monthly payments on behalf of SSL. In addition to the Master Deeds of Assignment a specific deed of assignment will be entered into between the relevant member of the SmartPay Group and SSL each time a batch of contracts is assigned to SSL. The Manager is tasked with ensuring that all assignment documentation is executed and in place before the Manager authorises the release of funds from SSL's bank account in payment for contracts. As and when SSL purchases contracts those contracts will automatically be an asset of SSL and will be covered by the first ranking general security and the specific security granted by SSL to the Security Trustee.

# the specifics of the offer (continued)

SSL is a special purpose vehicle incorporated for the sole purpose of acting as the borrower under the Facility. SSL does not undertake any business other than borrowing funds from Lenders and using such funds to purchase subscription agreements from the relevant members of the SmartPay Group. If an event of default occurs the only assets available to meet the claims of Lenders will be the cash held by SSL in its bank account and the future cash flows under the contracts purchased by SSL. The Lenders also have the benefit of the unsecured guarantee provided by SmartPay Limited (which guarantee is held by the Security Trustee for the benefit of the Lenders).

As referred to on page 10 above, MIPS will hold and manage the contracts purchased by SSL pursuant to the terms of the Contracts Management Agreement. MIPS will continue to retain custody of the contracts and collect all monthly rental/subscription payments from the relevant customers by direct debit. The funds will be received into a bank account in the name of and under the control of MIPS and will only be transferred into SSL's account on a monthly basis (shortly after all of the relevant direct debits from customers have been processed). If an event of default occurs under the Transaction Documents and the Security Trustee exercises its security the individual customers will be notified of SSL's rights in the relevant contracts and will be directed to make all future payments into SSL's bank account or a bank account operated by the Security Trustee or a receiver appointed by the Security Trustee.

## Events of default

The Facility Deed sets out what constitutes an Event of Default. Each of the following is an Event of Default for the purposes of the Facility Deed and the Security Documents:

- a. SSL fails to pay any indebtedness under any Loan Agreement or other Transaction Document within 10 Business Days of the due date (except where such non-payment on the due date has arisen solely by reason of a technical, computer or similar error outside the control of SSL); or
- b. SSL or SmartPay Limited (as guarantor) fails to comply with any of its other obligations under any Transaction Document and, in the case of a failure that is capable of remedy, that failure is not remedied to the reasonable satisfaction of the

Security Trustee within 10 Business Days after notice of that failure has been given to it by the Security Trustee; or

- c. Any statement, representation or warranty made or deemed to have been made by or on behalf of SSL or SmartPay Limited in any Transaction Document or in any certificate, statement or notice delivered or made pursuant thereto is or proves to have been untrue, inaccurate or incorrect, in any material respect, when made or repeated or deemed to have been made or repeated; or
- d. All or any part of any Transaction Document:
  - (i) Is or may become, void, illegal, invalid, unenforceable or of limited force and effect;
  - (ii) Is or becomes capable of being avoided, rescinded, terminated or cancelled by SSL or SmartPay Limited; or
  - (iii) Is repudiated or any liability owed to a Lender or the Security Trustee under it is limited or reduced, or any person other than the Lender or the Security Trustee evidences any intention to repudiate, reduce or limit liability under it; or
- e. SSL:
  - (i) Is insolvent or unable to pay its indebtedness as it falls due or is deemed to be so under any law; or
  - (ii) Stops or suspends payment of any of its indebtedness or threatens to do so; or
  - (iii) Makes, or proposes to make, any compromise, assignment, arrangement or composition with, or for the benefit of, its creditors; or
- f. A distress, attachment, execution or other legal process is levied against property of SSL and is not discharged or stayed within five days or a receiver, trustee, manager, administrator or similar officer is appointed in respect of it or any of its property; or
- g. The board of SSL passes any resolution for or in contemplation of any amalgamation of SSL with another company except for an amalgamation with SmartPay Limited or any one or more members of the SmartPay Group on terms approved in writing by the Security Trustee prior to such amalgamation taking effect; or

- h. An order is made, resolution passed or other step taken by a person for the liquidation of SSL, except for the purpose of and followed by a reconstruction or reorganisation (not involving or arising out of insolvency) on terms approved by the Security Trustee before that step is taken; or
- i. SSL 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; or
- j. A security interest in property of SSL becomes enforceable; or
- k. Any indebtedness of SSL for an amount not less than NZ\$50,000:
  - (i) Is not paid when due; or
  - (ii) Becomes due, or capable of being declared due, before it would otherwise have been due; or
- l. It is or will become unlawful for SSL to comply with any of its obligations under a Transaction Document in any material respect; or
- m. There is a material adverse change in relation to the financial position and/or financial performance of SSL or there is the existence of circumstances or the occurrence of events that can reasonably be expected to result in a material adverse change to the financial position and/or financial performance of SSL; or
- n. One of the events specified in paragraphs (e) to (m) above occurs with respect to SmartPay Limited as if references in those paragraphs to SSL were to SmartPay Limited; or
- o. SSL ceases to be a wholly-owned indirect subsidiary of SmartPay Limited; or
- p. MIPS is in material breach of its obligations under the Contracts Management Agreement and fails to remedy such breach within 10 Business Days of written notice from SSL or the Manager (given on behalf of SSL) requesting that such breach be remedied; or
- q. Any other circumstance that, with the giving of notice, lapse of time or fulfilment of another requirement, would constitute one of the events described in the preceding paragraphs.

## Documentation

The documentation to support this structure includes:

- a. Facility Deed between SSL, SmartPay Limited and the Manager, which document sets out the key terms applicable to each Loan;
- b. A General Security Deed between SSL and the Security Trustee, under which SSL grants the Security Trustee a first-ranking security interest in all of its present and after acquired property;
- c. Master Deed of Assignment between each relevant member of the SmartPay Group and SSL in relation to contracts assigned to SSL;
- d. Specific Deed of Assignment between each relevant member of the SmartPay Group and SSL (to be entered into with respect to each “batch” of contracts purchased by SSL);
- e. Specific Security Deed between SSL and the Security Trustee, under which SSL grants the Security Trustee a first-ranking security interest over the contracts (and associated future cash flows and hardware) assigned to SSL;
- f. Deed of Guarantee and Indemnity granted by SmartPay Limited to the Security Trustee, pursuant to which SmartPay Limited guarantees (on an unsecured basis) all of SSL’s obligations to the Lenders and the Security Trustee;
- g. Contracts Management Agreement between SSL and MIPS pursuant to which MIPS has agreed to manage all subscription agreements assigned to SSL; and
- h. Security Trust Deed between SSL, the Security Trustee and Smartpay Limited (as guarantor) pursuant to which the Security Trustee has agreed to hold and enforce the security on behalf of the Lenders.



## smartpay recent history

As an integrated merchant services provider the SmartPay Group is focused on the continuing development of value-added products and services to its Australasian customers. The recent changes to New Zealand's banking requirements for EFTPOS terminals presents an immediate opportunity to replace up to 60,000 units with new products. In Australia, over the next four years - nearly 600,000 terminals will have to be upgraded in order to comply with the latest security and processing standards. The SmartPay Group will be chasing hard – in both markets - to win as much of this business as possible.

The SmartPay Group aims to build long-term relationships with its customers and provide products and services based on a subscription agreement model. This approach produces reliable, recurring and renewable revenue streams, and provides the ability to introduce new products and services to the merchant relationship thereby adding value to the SmartPay Group.

Providing merchants with the opportunity to run their businesses more efficiently, has in turn, considerably improved the SmartPay Group's business. The SmartPay Group's corporate sales team has won or renewed contracts with a number of nationwide retailers including Paper Plus Group, Mitre 10 and Postie Plus. In total the SmartPay Group now has a database of approximately 30,000 customers, a growing business in Australia, significant infrastructure and a clear plan in place.

Merchants require the SmartPay Group's products to remain in business, thereby reducing the risk to both the SmartPay Group and the Lenders. Further, the volume of individual merchants, combined with the high end corporate customers, further reduces the risk of default or of a default having a material impact on the value of the assets held by SSL.

The SmartPay Group can help its customers to do more with less, a message that has been welcomed during these challenging economic times. Recently the SmartPay Group took steps to move away from uneconomic and low margin business activity, and refocused on driving sustainable and ongoing revenue streams. The SmartPay Group has chosen to devote more resources to research and development to create a unique range of software that will further differentiate

it from its competitors. Where possible, the SmartPay Group owns the technology and the underlying intellectual property inherent in its products and services.

Over the past year the SmartPay Group has navigated its way through an unprecedented period of change and economic uncertainty and has emerged a stronger and bigger organisation.

Through a combination of acquisitive and organic growth, the SmartPay Group has consolidated its position as New Zealand's leading merchant services provider. In August 2009 SmartPay gained significantly more scale when it bought the payments division of competitor Provenco Cadmus. The acquisition included intellectual property, manufacturing capability, customer bases and an Australian payments business. This opportunistic purchase quadrupled the size of the business, and saw SmartPay's share price achieve a record high.

Since then work has gone into amalgamating the Provenco Cadmus payments business into the SmartPay Group, integrating systems, and 'steadying the ship'. Financial plans were developed to ensure that the new larger SmartPay Group could prosper and the board of directors and executive team spent some time evaluating the larger business before making further structural changes that were announced in May 2010. This, coupled with building the SmartPay Group's value-added service offering, growing corporate sales and positioning the SmartPay Group to expand further has been the focus of the past 12 months.

A key change has been a move away from direct manufacturing to the utilisation of hardware supplied by third parties, with the SmartPay Group focusing on the delivery of specialist and unique software services.

A lot of work has also gone into developing the SmartPay Group's ability to meet the latest banking and security standards. Meeting these standards is of increasing importance with many larger merchants now deploying their own cards, gift vouchers and loyalty programmes, which contain value similar to cash.

The SmartPay Group's added value services portfolio took a significant leap forward this year when it purchased a Postilion transactional switch. Compliant with international bank standards for card processing, it is a powerful resource that allows the SmartPay Group to better support customers, and to offer new services in support of its overall growth objectives. Work has begun on a range of new services to support the SmartPay Group's merchants as industry standards evolve even further.

In Australia, the SmartPay Group has a base of over 8,000 terminals via its bank relationships and 4,500 terminals with taxi operators, with the largest such taxi operator recently signing a commitment to extend the current contract for a period of four years. This provides a fantastic spring board for growth. The SmartPay Group's products are undergoing certification from a number of banks in Australia and are fully compliant in the New Zealand market. Further, the SmartPay Group is finishing a project

# smartpay recent history (continued)

to upgrade the current Australia installed base to comply with the latest EMV industry requirements.

The SmartPay Group is also in the process of certifying its new product suite range for use by a number of Australian banks and EFTPOS processors. This platform will allow the SmartPay Group's Australian team to further expand its merchant base by launching many of the products that have been successful in New Zealand.

Once the certification process is completed, the SmartPay Group's products will have acceptance in Australia with Westpac; St George and Bank of South Australia.

## Financial information

In the year to 31 March 2010 SmartPay became profitable at an operating level, due to significantly improved margins and sales growth, and in the process achieved the upper end of EBITDA guidance.

Top line revenue increased by 11% to reach \$39.4 million, up from \$35.5 million for the previous year. Earnings before interest, tax, depreciation and amortisation improved by \$3.8 million to

reach \$2.0 million, up from \$(1.8) million for 2009. Net earnings before tax, while a \$2.6 million loss, improved by \$1.3 million. Importantly, the financial result for the year ended 31 March 2010 included just seven and a half months' trading from the Provenco Cadmus payments business.

A number of one-off costs associated with the Provenco Cadmus acquisition impacted SmartPay's bottom line, including increased costs to rebuild inventory and service stock; legal fees and consolidation of consultancy costs. Net earnings were also impacted by high interest and financing costs related to the acquisition.

## General

For further information on the SmartPay Group please go to [www.smartpay.co.nz](http://www.smartpay.co.nz). In addition, in accordance with its continuous disclosure obligations under the NZSX Listing Rules, all material announcements concerning the SmartPay Group are released to NZSX and are available for viewing at [www.nzx.com](http://www.nzx.com) (ticker code: SPY)



## directors' profiles

The names and details of the Company's directors in office are as follows:

### 1. Wayne Johnson

Independent Director

Wayne has over 25 years' business and financial transaction experience gained in Australia, New Zealand, Asia and North America. He has founded and helped manage a range of businesses from start-ups through to public listings and has been responsible for a number of large business sales in the technology and telecommunications industries to multinational buyers. Wayne provides a wealth of experience in mergers and acquisitions, corporate advisory and general business development to the board.

### 3. Greg Barclay

Director

Greg practices in general commercial law providing advice on mergers and acquisitions, corporate structuring and commercial property. He is a founding principal of Claymore Partners Limited, and has a law degree from the University of Canterbury and a postgraduate diploma in business from Auckland University. Greg brings experience as a present or past director of high profile New Zealand companies including Kim Crawford Wines, Pacific Forest Products Group and Hospitality New Zealand to the SmartPay board.

### 2. Ian Bailey

Managing Director

Ian has been involved in the EFTPOS and IT industries for over 25 years. He has been Managing Director of a number of successful start-up companies in the EFTPOS and IT industries including five years as Managing Director of Provenco's Australian subsidiary until 1996, and subsequently founder of Cadmus Technology Limited from inception to listing, in New Zealand, until his departure in 2007. He is also a member of the Institute of Directors and owns management consultancy company Riverhorse Consultants Limited.

<sup>1</sup> Before restatement



## security trustee profile & role

Covenant Trustee Company Limited has been appointed to act as Security Trustee in connection with the Offer.

Covenant Trustee Company Limited was established in 1983 and is a provider of trustee and statutory supervision services under the Securities Act 1978 and Unit Trusts Act 1960. Covenant has specialised solely in a range of corporate trustee services in regard to public and private issues for finance companies, investment schemes, unit trusts, and proportionate ownership schemes.

Covenant is not aligned with any financial services group and it offers a truly independent service.

The Security Trustee holds the security (being the first-ranking general security over the assets of SSL and the specific security over the contracts held by SSL), together with the unsecured guarantee from SmartPay Limited, as security trustee and administrative agent for the Lenders pro rata to their principal invested. The Security Trust Deed confers numerous powers on the Security Trustee, including the power to:

- a. Hold a meeting of Lenders if required (including in an Event of Default or when otherwise considered appropriate by the Security Trustee);
- b. Agree to minor amendments to the Security Documents (which amendments will be binding on SSL and all Lenders);
- c. Take steps to enforce the Security if it receives notice of an Event of Default from a Lender, SSL, SmartPay Limited, the Manager or the auditor to the SmartPay Group;
- d. Subject to being indemnified to its satisfaction, take steps to enforce the Security or other rights under the Security Trust Deed if Lenders by extraordinary resolution (being a resolution passed by holders of 75% of the aggregate principal invested) require the Security Trustee to take such action.

Subject to any contrary direction given by the Lenders by extraordinary resolution, the Security Trustee may, provided that it is satisfied that the interests of the Lenders will not be materially prejudiced as a result, waive any breach or anticipated breach by SSL or SmartPay Limited of their obligations under the Security Trust Deed, the Facility Deed or the other Transaction Documents. Any such waiver will be binding on all Lenders.

Only the Security Trustee holds, and can enforce, the Security. While each Lender will have a direct contractual relationship with SSL under the terms of a Loan Agreement entered into, and will be able to enforce the terms of such Loan Agreement against SSL, the Lender will not be able to enforce the Security against SSL or SmartPay Limited. Only the Security Trustee (acting as administrative agent of the Lenders) may enforce the Security. However, the Security Trustee may refrain from exercising any discretion, power or authority vested in it until it has a direction to act from the Lenders given by ordinary resolution or extraordinary resolution (as applicable). No Lender has the power individually to instruct the Security Trustee to take any action.

The Security Trustee will not be responsible to any Lender for:

- a. The execution, validity, enforceability or sufficiency of any relevant document;
- b. The ability of SSL, SmartPay Limited, MIPS, the Manager or any other party to meet its payment and other obligations under any relevant document;
- c. The collectability of any amounts payable under any relevant document;

- d. The accuracy of any statements made in or in connection with any relevant document or made in any communication or documentation received by it which it provides to any other party;
- e. The adequacy of, nature, or suitability of any of the secured property; or
- f. The value of the secured property (including the potential recovery value in an enforcement scenario).

The Security Trustee has only the duties and obligations which are expressly specified in the Security Trust Deed and any other financing document to which it is a party. Those obligations are solely of a mechanical and administrative nature and the Security Trustee does not have any duty, obligation or responsibility to, or relationship of trust or agency with, any Lender other than as expressly set out in the Transaction Documents.

Under the provisions of the Security Trust Deed the Security Trustee will not be liable to SSL, SmartPay Limited, the Lenders or any other person unless the Security Trustee has acted in gross negligence, fraudulently, or in wilful breach of trust or any law, or in wilful breach of its obligations under the Security Trust Deed, the Facility Deed or any Security.

## Meetings

The Facility Deed and the Security Trust Deed contain provisions for meetings of Lenders. Meetings may be convened by SSL, the Manager or the Security Trustee, or by SSL at the request in writing of Lenders holding not less than 25% of the aggregate principal advanced under all Loan Agreements. 14 days notice of each meeting must be given to the Lenders. A quorum at a meeting at which an extraordinary resolution is proposed is Lenders present in person or by representative who have advanced at least 50%

of the aggregate principal advanced under all Loan Agreements. For any other meeting the quorum is Lenders who have advanced at least 10% of the aggregate principal advanced under all Loan Agreements. A person appointed by the Security Trustee will be chairperson of the meeting and any director, officer or solicitor or person authorised by the Security Trustee, the Manager or SSL may attend any meeting and have the right to speak at the meeting.

A Lender may appoint a proxy or other representative to represent them at a meeting. Voting will be carried out by a show of hands unless a poll is demanded in which case every Lender will have one vote for every \$1.00 of principal advanced by them to SSL under a Loan Agreement.

Certain major decisions must be carried out by an extraordinary resolution.

## Distribution of Proceeds

The Security Trust Deed sets out how the Security Trustee is to apply proceeds received by it from exercising the security held. As is customary, the net proceeds received will first be applied towards meeting the costs and expenses of the Security Trustee and any receiver appointed by the Security Trustee. The balance will be applied towards any amounts owed to preferential creditors, meeting amounts owed to the Manager, and repaying amounts owed to Lenders (*pari passu*), in that order, with any balance being remitted to SSL. All distributions by the Security Trustee will be made at such times as the Security Trustee in its absolute discretion determines to be as soon as reasonably practical, having regard to all relevant circumstances.



## manager profile & role

Carlton DFK is a chartered accountancy firm based in Newmarket, Auckland. The firm commenced in 1910 as Chambers Worth & Chambers and has a long and proud history of providing excellent and reliable service for its clients, some of whom have been clients for many decades.

In 2001, the practice name was changed to Carlton DFK when the firm was accepted as a member firm of DFK International, a major international association of independent accounting firms and business advisers, with over 300 offices across the world employing more than 7,500 staff.

Carlton DFK offers a full range of accountancy, tax, auditing and trustee services for which it is able to draw on considerable experience, both within the firm and from member firms of DFK International.

The primary role of the Manager is to monitor and report on the operation of the book assigned to SSL, to monitor and control the payment of funds by SSL for assigned contracts, and to co-ordinate payment of interest and repayment of principal to Lenders.

Without limitation to the above, the role of the Manager is to:

- a. If a Loan Agreement is accepted by SSL, receive funds from the relevant Lender into a dedicated bank account in the name of SSL (the "SSL Account") over which the Manager will have signing authority;
- b. Establish and maintain the Register of Lenders;
- c. Undertake due diligence on each batch of contracts to be assigned to SSL to ensure that:
  - (i) The purchase price payable by SSL for such contracts is not more than 80% of the face value of the future cash flows of such contracts;
  - (ii) The relevant contracts to be purchased meet the specified Credit and Collection Policy;
  - (iii) The contracts conform with one or more of the standard form contracts (either paper contracts or online contracts) reviewed and approved by SmartPay's legal advisers;
- d. Authorise release of funds from SSL's bank account in payment for contracts purchased from the relevant members of the SmartPay Group;
- e. Register a financing statement on the Personal Property Securities Register over the relevant member of the SmartPay Group with respect to each batch of contracts assigned to SSL;

- f. Calculate payments of interest under the Loan Agreements and resident withholding tax, non-resident withholding tax and approved issuer levies on such payments of interest;
- g. Subject to there being sufficient funds on the SSL Account, make payment from such account:
  - (i) Of net interest to Lenders;
  - (ii) To Inland Revenue, of resident withholding tax, non-resident withholding tax and approved issuer levies on interest; and
  - (iii) Of principal to Lenders,

In accordance with the Facility Deed and the terms of each Loan Agreement;
- h. Arrange the rollover or extension of a Loan if agreed by the relevant Lender and SSL; and
- i. Report any Event of Default of which it becomes aware to the Security Trustee.

The Manager has the power to agree to minor amendments to the Facility Deed and other Transaction Documents (other than those to which the Security Trustee is a party), which amendments will be binding on SSL and all Lenders.

### Reports from SSL

SSL is required to provide the Manager with quarterly reports in relation to SSL and its compliance with certain covenants under the Facility Deed. In particular, the quarterly reports are to specify:

- a. The future cash flows of all contracts held by SSL;
- b. The ratio that the Security Value bears to the aggregate principal amount borrowed by SSL. The "Security Value" is the aggregate of the future cash flows under the contracts held by SSL (excluding those contracts in Default) and the cash held in the bank by SSL;
- c. Whether any matter has arisen in relation to SSL or SmartPay Limited (as guarantor) which would adversely affect the ability of either of them to perform their obligations under the Facility Deed, the Loan Agreements, the Security Trust Deed or the other Transaction Documents;
- d. That each of SSL and SmartPay Limited (as guarantor) have duly observed, performed and complied with their obligations under the Trust Deed, the Loan Agreements and the other Transaction Documents;
- e. That all interest payable on the Loans has been paid;
- f. The number of contracts in Default (a contract shall be in "Default" if the relevant debtor is in arrears by 90 days or more);
- g. The future cash flows of the contracts in Default;
- h. The balance of funds in SSL's bank account at the end of the relevant quarter;
- i. That each of SSL and SmartPay Limited are solvent; and
- j. The aggregate amount outstanding under the Loan Agreements as at the end of the relevant quarter.



## risks

The following are seen as risk factors for prospective Lenders:

- The Lender may not receive timely, or any, interest payments on their Loans; or
- Lenders may not receive timely, or any, repayment of principal advanced.

These circumstances could arise for a number of reasons including if:

- SSL or SmartPay Limited become insolvent or otherwise are unable to pay their debts;
- SSL is not able to repay each Loan on the expiry of the relevant term;
- A Loan (or part thereof) is repaid early by SSL before the repayment date; and/or
- There is a change in company tax rates or individual income tax rates.

The ability of SSL to make ongoing monthly payments of interest and repay the principal of each Loan on the relevant repayment date is dependent on the subscription payments received by SSL from the contracts purchased by SSL from the relevant members of the SmartPay Group and the ability of SSL to secure adequate funds from additional sources to meet principal repayments at the relevant times. If an Event of Default occurs and the Security Trustee enforces the security it will take time to convert the security into cash as the contracts held by SSL will, depending on when they were acquired by SSL, possibly have up to 3 to 4 years of term remaining. It could therefore take a significant amount of time to realise the security in full and close out the subscription agreements held by SSL. There may be an option for the Security Trustee to sell the subscription agreements held by SSL to a third party in order to realise the value of the security immediately but any such sale, if possible, will likely be at a discount to face value which may result in there being insufficient funds to repay Lenders in full.

The general financial well-being of SmartPay Limited as the guarantor of the Loans is dependent on the financial well-being of its business and that of the SmartPay Group.

Any change to tax law or the rate of company income tax has the potential to affect a Lender's returns.

In addition to this "Risks" section, prospective lenders should refer to the FAQs on pages 27 and 28.

### Risks to SSL

The primary risks to SSL are:

- a. That one or more customers defaults under the contracts purchased by SSL and the SmartPay Group fails to, or is unable to, assign additional contracts to SSL to ensure that the ratio of future cashflows under the subscription agreements plus cash in SSL's bank account to the aggregate amount owed by SSL to all Lenders is not less than 1.2:1;
- b. That SmartPay Limited and/or the other relevant members of the SmartPay Group are placed in liquidation, administration or receivership or otherwise fail to, or are unable (for whatsoever reason) to, meet the delivery and service obligations to customers under the relevant contracts assigned to SSL, thereby entitling the customers to terminate the relevant contracts.

These risks are, in part, mitigated by the following:

- a. SSL will, over time, hold a variety of merchant contracts (with an average face value of between \$1,836 and \$2,520) as well as flexi-rent contracts from corporate customers. Each such contract must have a rating of C- or better under SmartPay's credit and collection policy. Historically, contracts of these type signed by the SmartPay Group have had a low default rate. In addition, the majority of the contracts are for EFTPOS terminals and associated equipment. As businesses are dependent on a functioning EFTPOS terminal for their revenue, there is a strong incentive for the relevant customers to ensure timely payment of the monthly amounts owing under the subscription agreements they enter into with the SmartPay Group. In light of the foregoing widespread default by customers is considered unlikely;
- b. The software in the EFTPOS terminal or other equipment leased to customers under each subscription agreement is installed in the terminal/equipment at the time of delivery and, in the case of EFTPOS terminals, connects directly to the EFTPOS network (Paymark and/or ANZ) that controls delivery of the EFTPOS service. Therefore, should the relevant members of the SmartPay Group fail to provide the contracted services the relevant terminal/equipment will continue to operate as the relevant software is embedded in the hardware.

## Risks to SmartPay Limited

There are several risk factors associated with the financial well-being of SmartPay Limited (as guarantor) and its business, namely:

- a. **General Market Risks:** General market and business risk results from the fact that there are economic or worldwide phenomena, which threaten all businesses. Certain risks will affect most, if not all, businesses. Fluctuations in global interest rates, exchange rates, world economic growth, and changes in commodity prices are all examples of general market risks which would impact both the financial markets as well as businesses operating in the "real" economy.

The economic uncertainties facing the global economy as well as domestic influences may affect the sector SmartPay Limited operates in in a manner or to an extent which has not been foreseen by SmartPay Limited. For instance, deterioration in the New Zealand economy may affect the

payments to be received by SmartPay Limited and the SmartPay Group for the sale or rental of its products and services. In addition, a worsening economy may mean that SmartPay Limited may have to reduce pricing on its products and/or services with corresponding lesser margins.

- b. **Growth Strategy:** The future profitability of SmartPay Limited and the SmartPay Group will depend largely on its ability to continue to provide ongoing service and support to its customers and to resign customers as their current subscription agreements expire. If the projected take up of the product and service offering is not achieved then SmartPay Limited may not be able to meet its overall growth targets which could, in turn, adversely affect the profitability of SmartPay Limited. The SmartPay Group's sales team has a programme of targeting existing customers prior to expiry of their current contract in order to maximise the success of re-signs. In addition, the sales team is constantly targeting new SME and corporate customers to grow the customer base. In order to further drive sales the SmartPay Group is constantly developing innovative and unique service offerings to differentiate itself from its competitors.
- c. **Industry Risks / Ongoing Product Development:** The SmartPay Group provides integrated electronic services to a wide range of merchants and retailers and also operates in the telecommunication backroom support services sector. The industries in which the SmartPay Group operates are constantly evolving with the development and introduction of new technology and the introduction of new applications of existing technologies. In these sectors the SmartPay Group faces possible competition from other companies offering competing products and services but may also be affected by any downturn in demand for such products and services generally. If new or cheaper merchant payment technology support solutions are developed by its competitors, there is a risk that the products and services developed by the SmartPay Group may become obsolescent. Increased competition in the merchant payment technology solutions market may develop, resulting in a negative impact on profit margins. The SmartPay Group is constantly seeking ways to improve its product offering to mitigate risk from competition and obsolescence.

# risks (continued)

- d. **Dependence on Key Personnel:** SmartPay Limited relies on senior management team and several key consultants to the SmartPay Group to implement its growth strategy. SmartPay has taken steps to retain these key personnel through market-driven remuneration packages. In addition, SmartPay has initiated a policy of “cross training” or “multi skilling” in a number of its key business units to ensure a smooth succession process in the future.
- e. **Regulatory Risk:** As a technology business with operations in New Zealand, the SmartPay Group is exposed to government regulatory policies that could have a direct or indirect bearing on its business operations or product and service offerings. Any unanticipated or sudden changes in the regulatory environment may affect SmartPay Limited’s ability to meet its business objectives.
- f. **Interest Rates:** SmartPay Group is exposed to movements in interest rates where funds are borrowed at a floating interest rate and where fixed rate debt is being refinanced. SmartPay Group is a significant user of debt which increases the sensitivity of interest rate movements.
- g. **Debt levels and refinancing:** SmartPay Group has relatively high levels of debt and there is a risk that SmartPay Group does not generate sufficient cash to cover the outstanding debt service obligations which may force SmartPay Group to default on their debt obligations, refinance a portion of their debt or obtain additional funding on terms that are not as favourable. The SmartPay Group debt will need to be refinanced at varying maturity dates and the terms under which the debt is refinanced or an inability to refinance or extend may affect the financial performance.
- h. **Working Capital funding:** To fund its operations the SmartPay Group enters into financing agreements with various financiers and allocates subscription agreement cash flows (being the monthly rental payments payable by customers over the relevant contract term) as security for

the funding advanced. The SmartPay Group is reliant on continued access to such facilities (including the Facility) to fund its operations and ongoing business. If the SmartPay Group is not able to secure the necessary funding under such facilities there is a risk that it may not be able to fund the business at the level required to meet its growth targets or, indeed, to fund its ongoing operations at all.

## Forward Looking Statements

Certain statements in this information memorandum constitute forward-looking statements. Such forward-looking statements involve known and unknown risks, uncertainties, and other factors which may cause the actual results, performance, and achievements of SSL or SmartPay Limited, or industry results, to be materially different from any projected or anticipated results, performance, or achievements expressed or implied by such forward-looking statements.

Given these uncertainties, prospective lenders are cautioned not to place undue reliance on such forward-looking statements and to note the limitations of these forward-looking statements in the manner described above. In addition, under no circumstances should the inclusion of such forward-looking statements in this information memorandum be regarded as a representation or warranty by SSL, SmartPay, or any other person with respect to the achievement of the results set out in such statements, or that the underlying assumptions used will in fact be the case. Each of SSL and SmartPay disclaims any responsibility to update any such risk factors or publicly announce the result of any revisions to any of the forward-looking statements contained in this information memorandum to reflect future developments or events, other than where it is required to do so by the law or by the listing rules of any recognised securities exchange on which the shares in SmartPay are listed and traded.

Factors that could cause such differences include, but are not limited to, those discussed in this section.

# frequently asked questions

## a. What happens if SmartPay fails, does the terminal continue operating?

Yes, the subscription agreement is between the customer and the relevant member of the SmartPay Group. A subscription agreement can be for a range of services that include the connectivity of the terminal to the EFTPOS network, along with potentially other services such as telecommunications and/or marketing media. The software in the EFTPOS terminal is installed in the terminal at the time of delivery and connects directly to the EFTPOS network (Paymark and/or ANZ) that controls delivery of the EFTPOS service. Therefore, should SmartPay fail the services will continue as the relevant software is embedded in the hardware.

## b. What happens if the terminal breaks down and SmartPay is not available to service the terminal?

In this case there are a number of people who can provide customer support and service to the products sold by SmartPay as they relate to the payments industry (EFTPOS terminals).

## c. How do I know what the quality of the subscription agreements held by SSL or to be acquired by SSL is?

The subscription agreements are based on a standard set of legally reviewed agreements. In addition, the SmartPay Group operates a specified credit and collection policy which sets out certain credit checks that must be undertaken and credit criteria that a customer must meet before the relevant member of the SmartPay Group enters into a subscription agreement with the customer. Under the terms of the Facility Deed, only those contracts which meet the criteria of C- or better under SmartPay's credit and collection policy will be qualifying contracts for calculating the ratio of future cashflows under the subscription agreements plus cash in SSL's bank account to the aggregate borrowings of SSL.

## d. Who reports and oversees MIPS performance?

MIPS provides reports each month to SSL which are available to the Manager under the terms of the Facility Deed.

## e. What happens when a contract is in default?

Is it withdrawn from the pool?

Are there 'topping up' arrangements?

Yes. If a contract is in default by 90 days it is removed and a replacement contract is assigned to SSL. In effect SSL has full recourse to the relevant member of the SmartPay Group from whom it acquired the defaulting contract. Historically, SmartPay has experienced low default rates and therefore default is not expected to pose a significant risk to Lenders.

## f. What happens when the contracts expire?

Does the pool run down?

Or are new contracts put into the pool?

The relevant members of the SmartPay Group will continue to top up the pool of contracts assigned to SSL to ensure that the ratio of future cashflows under the subscription agreements plus cash in SSL's bank account to the aggregate borrowings of SSL is not less than 1.2:1.

## g. Who ensures the contracts are legally enforceable? And who enforces them?

MIPS manages and maintains the customer base and records in accordance with the terms of the Contracts Management Agreement. All contracts are based on a standard set of legally reviewed agreements and are approved prior to SSL purchasing the contracts from the relevant members of the SmartPay Group. MIPS enforces the collection at its own cost, however, any contract in arrears by more than 90 days is removed from the pool of contracts assigned to SSL and is replaced with another contract of equivalent or greater value.

# frequently asked questions (continued)

## **h. Is there co-mingling risk with other bulk financiers/funders of SmartPay?**

No. Contracts allocated to SSL are those relating only to SSL and are uniquely identified by contract number and appropriate details.

## **i. Where can I get a copy of the Facility Deed?**

A copy of the Facility Deed will be made available to prospective lenders with the Loan Agreement. As you will be bound by the provisions of the Facility Deed you should ensure that you receive a copy of that document before signing a Loan Agreement. If you have not received a copy of the Facility Deed you should request one from the Manager or from SSL.

## **j. Where can I get a copy of the Security Trust Deed?**

A copy of the Security Trust Deed will be made available to prospective lenders upon request. Please contact the Manager or SSL should you require a copy of the Security Trust Deed.

## **k. When is interest paid?**

Interest (net of applicable withholding taxes and, if applicable, approved issuer levies) will be paid monthly in arrears by SSL on the last business day of each month. The Manager will coordinate payment of net interest to Lenders and payment of withholding tax and, if applicable, approved issuer levies to IRD on behalf of Lenders, however the legal obligation to make payment of interest rests with SSL and the Manager is not liable to Lenders for any non-payment of interest.

## **l. How is interest paid?**

Interest will be paid by direct credit into the bank account nominated by each Lender in their Loan Agreement.

## **m. Will resident withholding tax be deducted from the interest payments?**

Yes. Each payment of interest to a Lender will be made net of withholding tax required by law to be withheld by SSL, except to the extent that the Lender has provided SSL with a current certificate of exemption from withholding tax and SSL is satisfied that the Lender is exempt from withholding tax. In accordance with its legal obligations, SSL will provide each Lender with an annual certificate detailing the amount of withholding tax deducted and paid to IRD on behalf of the Lender.

## **n. Can I reinvest my interest payment – i.e. compound it?**

No. However, you can make an additional investment at any time subject to such investment being of an amount of at least \$500,000.

## **o. If my circumstances change, can I get my money out early?**

Your Loan will be for a fixed term as elected by you and specified in the Loan Agreement. There is no ability for a Lender to require early repayment.

## **p. Who can I talk to if I have questions: Before signing a Loan Agreement? After entering into a Loan Agreement?**

You can talk to Mr Ian Bailey, Managing Director of SmartPay.

## **q. Who sets and pays the fees of the Security Trustee and the Manager?**

The SmartPay Group is responsible for meeting all costs of the Security Trustee and Manager.

# glossary

**“Contracts Management Agreement”** means the agreement entered into between SSL and MIPS pursuant to which MIPS has agreed to manage all subscription agreements assigned to SSL;

**“Deed of Guarantee”** means the deed of guarantee and indemnity entered into by SmartPay Limited in favour of the Security Trustee pursuant to which SmartPay Limited guarantees to the Security Trustee (for the benefit of the Lenders) SSL’s performance of its obligations under the Facility Deed and the Loan Agreements;

**“Event of Default”** has the meaning given to it in the Facility Deed;

**“Facility”** means the bulk funding facility the subject of the Facility Deed pursuant to which high-net worth individuals will each lend not less than \$500,000 to SSL with such funds to be used by SSL to acquire equipment rental contracts and services contracts from relevant members of the SmartPay Group;

**“Facility Deed”** means the Deed Relating to Bulk Funding Facility entered into between SSL, SmartPay Limited (as guarantor) and the Manager dated 20 October 2010, setting out, inter alia, certain terms and conditions applicable to all Loans, the role and duties of the Manager and the rules applicable to the calling and holding of meetings of Lenders (as such deed may be amended from time to time in accordance with its terms);

**“General Security Deed”** means the general security deed (as amended from time to time in accordance with its terms) pursuant to which SSL has granted the Security Trustee a first-ranking security interest over all of SSL’s present and after acquired property;

**“Lender”** means a person who agrees to lend money to SSL pursuant to a Loan Agreement being, in relation to a Loan, the person specified as the lender in the relevant Loan Agreement (including their successors and permitted assigns);

**“Loan”** means a loan made to SSL by a Lender pursuant to a Loan Agreement;

**“Loan Agreement”** means a loan agreement entered into between SSL and a Lender pursuant to which the Lender agrees to lend not less than NZD\$500,000 to SSL on the basis of the terms set out in such loan agreement and the Facility Deed;

**“Manager”** means Carlton DFK or such other person who may be appointed as manager of the Facility from time to time in accordance with the Facility Deed and with the prior approval of the Lenders by Ordinary Resolution;

**“MIPS”** means MIPS Financial Services Limited (company number 1966807), a wholly-owned subsidiary of SmartPay;

**“Offer”** means the offer of the opportunity to provide loan funding to SSL as outlined in this information memorandum;

**“Ordinary Resolution”** means a resolution passed at a meeting of the Lenders duly convened and held by a majority of the votes cast on that resolution or, if a poll is required, by a majority of the votes cast on the poll;

**“Security Documents”** means the General Security Deed, the Specific Security Deed, the Deed of Guarantee, and each other document that SSL and the Security Trustee agree will constitute a Security for the purposes of the Security Trust Deed;

**“Security Trust Deed”** means the deed entered into between SSL, Covenant Trustee Company Limited (as security trustee) and SmartPay Limited (as guarantor) dated 20 October 2010, pursuant to which the Security Trustee has agreed to hold and enforce the Security for the benefit of the Lenders, as the same may be amended from time to time in accordance with its terms;

**“Security Trustee”** means Covenant Trustee Company Limited or such other person who may be appointed as security trustee with respect to the Security Trust Deed and the Security Documents from time to time in accordance with the terms of the Security Trust Deed and with the prior approval of the Lenders by Ordinary Resolution;

**“SmartPay”** means SmartPay Limited (company number 304625);

**“SmartPay Group”** means SmartPay and its subsidiaries;

**“Specific Security Deed”** means the specific security deed (as amended from time to time in accordance with its terms) pursuant to which SSL has granted the Security Trustee a first-ranking security interest in its right, title and interest in subscription agreements (and associated equipment and receivables) acquired by SSL from members of the SmartPay Group;

**“SSL”** means SmartPay Subscriptions Limited (company number 3035127), a wholly-owned indirect subsidiary of SmartPay;

**“Transaction Documents”** has the meaning given to it in the Facility Deed.

# terms & conditions

## To become a Lender pursuant to this Offer, please:

- a. complete the attached Loan Agreement by:
  - (i) inserting the full legal name of the Lender in the relevant part of the table at section 1.1;
  - (ii) inserting the full postal address, physical address, phone number and other contact details of the Lender in the relevant part of the table at section 1.1;
  - (iii) inserting the Loan Amount (which must be NZD\$500,000 or more) in the relevant part of the table at section 1.1;
  - (iv) circling the relevant option for the Interest Rate/Repayment Date;
  - (v) inserting the details of the Lender's bank account in the relevant part of the table in section 1.1 (this will be the bank account into which SSL will make payment of interest and repayment of principal);
  - (vi) inserting the Lender's IRD number in the relevant part of the table at section 1.1;
  - (vii) ticking the relevant box for Resident Withholding Tax (if applicable) in the relevant part of the table at section 1.1. If you are exempt from Resident Withholding Tax please state this in the relevant section and provide the Manager with a copy of your current exemption certificate;
  - (viii) signing the Loan Agreement in the execution section (ensuring that your signature is witnessed). If the Loan Agreement is executed on behalf of a company, partnership or trust then only authorised signatories must sign. Please show clearly the nature of the authority or position held (e.g. Director, Authorised Signatory, etc.);
- b. send the completed and signed Loan Agreement, a RWT exemption certificate (if applicable) together with a cheque (drawn on a New Zealand bank in New Zealand dollars) made payable to "SmartPay Subscriptions Limited" (and crossed non-transferrable) to:

Carlton DFK  
Private Bag 99945  
Newmarket  
AUCKLAND 1031  
Phone 09 523 5117
- c. If the cheque is not a personal cheque with the Lender's name printed on it you must provide evidence of your identity in one of the following forms:
  - A copy of some photographic identification such as a passport, which has been certified as a true copy and a true likeness of you by a notary public, justice of the peace or solicitor; or
  - Certified copies of two forms of non-photographic identification.

By signing the Loan Agreement you are making an irrevocable offer to provide loan funding to SSL on the terms set out in the Loan Agreement and the Facility Deed. The offer will be capable of acceptance by SSL countersigning the Loan Agreement and depositing the cheque for the Loan Amount into its bank account within 15 days of the date on which the completed Loan Agreement and cheque are received by Carlton DFK. The offer to provide loan funding cannot be withdrawn by you but it will automatically lapse if SSL does not countersign the Loan Agreement and deposit the cheque for the Loan Amount within the aforesaid 15 day period.

# smartpay directory

## SmartPay Subscriptions Limited/SmartPay Limited

c/- SmartPay Limited

182-190 Wairau Road, Glenfield  
Auckland, New Zealand

Telephone: +64-9 442 2700

Facsimile: +64-9 442 2722

Website: [www.smartpay.co.nz](http://www.smartpay.co.nz)

## Directors of SSL

Ian Charles Bailey

Gregor John Barclay

Wayne Noel Johnson

## Security Trustee

Covenant Trustee Company Limited

Level 18, 48 Emily Place, Auckland

Attention: Corporate Business Manager

Phone: 09 302 1037

## Manager

Carlton DFK

Level 3, 135 Broadway

Newmarket, Auckland

Attention: Jacob Ploeg

Phone: 09 523 5117

**SMARTPAY** LIMITED

[www.smartpay.co.nz](http://www.smartpay.co.nz)