

ASB Merchant Services Terms and Conditions

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ASB Merchant Services Terms and Conditions

1. Definitions

1.1 Definitions: In this Agreement, unless context otherwise requires:

“Account Bank” means the bank at which the Deposit Account and Fees Account are held.

“Application Form” means the merchant services application form executed by you, which sets out, among other things, the types of Transactions that you are authorised to process and the Services that we will provide, and includes any document executed by you and us, which amends a merchant services application form or provides for the provision of Card merchant services subject to this Agreement.

“ASB Accept” means the service we provide whereby the EFTPOS terminal and network connections are provided together in one package branded as ASB Accept.

“Authorisation” means the service provided to us to enable you to seek approval for a Transaction, including checks on whether the Card account number quoted is a Valid Card, the availability of funds and whether the Card has been reported lost or stolen.

“Business Day” means any day (other than a Saturday and Sunday) on which banks are open for general banking business in Auckland and Wellington.

“Card” means a Mastercard Card, UnionPay Card or Visa Card.

“Cardholder” means a person to whom a Card has been issued.

“Card Present Transaction” means a Transaction which is effected through an imprinter or an EFTPOS terminal by you and the Cardholder in each case to authorise the electronic transfer of funds between the Cardholder’s nominated account and your account in circumstances where the Cardholder and the Card are present when processing that Transaction.

“Card Not Present Transaction” means a Transaction where the Cardholder and the Card are not present at your place of business when processing that Transaction and includes:

- (a) a MOTO Transaction; and
- (b) an Ecommerce Transaction.

“Card Scheme” means Mastercard, UnionPay and Visa.

“Card Scheme Rules” means the rules, regulations and programmes of the Card Schemes, including the rules, regulations and programmes made available on a Card Scheme’s public website or notified to you by us.

“Credit Voucher” means any Transaction receipt evidencing a refund or price adjustment to be credited to a Cardholder’s account by you.

“Deposit Account” means the account nominated by you in the Application Form as the account to which any amounts to be paid to you pursuant to this Agreement are to be credited, or such other account as notified to us by you from time to time for this purpose.

“E-Commerce Transaction” means a transaction entered into by a Cardholder with you via the Internet.

“EFTPOS” means Electronic Funds Transfer at Point of Sale.

“ENZ Services Agreement” means the agreement between you and ENZ for the supply of EFTPOS Services.

“ENZ” means EFTPOS New Zealand Limited.

“Fees Account” means the account nominated by you in the Application Form as the account from which any merchant fees or any other amounts payable to us pursuant to this Agreement are to be deducted, or such other account as notified to us by you from time to time for this purpose.

“Fixed Term Agreement” applies to this Agreement if it is specified as applying in the Application Form or if otherwise specified by us in writing to you.

“Initial Term” means, in respect of a Fixed Term Agreement, the period specified as such in the Application Form or as otherwise specified by us in writing to you.

“Interchange Fee” has the meaning given to that term in paragraph 1.2 of Schedule 3.

“Interchange Rate” means the current interchange rate (expressed as a percentage or fixed fee per Transaction depending on the Interchange Type) nominated by a Card Scheme and applicable to a Transaction that we pay to the issuing bank of the Card used for that Transaction.

“Interchange Type” means the type of interchange assigned to a Transaction by a Card Scheme, determined by a number of factors, including the nature of the Transaction, Card type used for the Transaction and the processing environment of the Transaction.

“Internet” means an electronic network that connects computer networks and organisational computer facilities around the world.

“Mastercard” means Mastercard International, Inc and any of its related companies.

“Mastercard Card” means a card issued pursuant to and in accordance with a licence granted by Mastercard and which bears, among other things, the word “Mastercard”.

“Merchant Operating Guide” means the “Merchant Operating Guide” we issue to merchants (as re-issued and amended from time to time).

“Merchant Service Fee” has the meaning given to that term in paragraph 1.1 of Schedule 3.

“MOTO Transaction” means a Transaction entered into by mail, email, telephone or other means of telecommunications, but does not include an E-Commerce Transaction.

“Open Term Agreement” applies to this Agreement if it is specified as applying in the Application Form or if otherwise agreed between you and us.

“PAN Entry Transaction” means a MOTO Transaction processed by the manual key entry of transaction data, being Card account number, expiry date and transaction amount into an EFTPOS terminal or payment portal.

“Paymark” means Paymark Limited.

“Paymark Merchant Agreement” means the agreement between you and Paymark for access to the Paymark system through the ENZ aggregation service.

“Paymark Tripartite Agreement” means the agreement between you, us and Paymark for the supply of EFTPOS services.

"PCI Security Standards" means the Payment Card Industry Data Security Standard and any other security standard published by the PCI Security Standards Council, LLC.

"Pre-Authorisation Transaction" means, in respect of a Transaction, Authorisation of that Transaction obtained prior to the time or date upon which payment is required to be made by the Cardholder.

"Recurring Transaction" means a Card Not Present Transaction for which a Cardholder grants written permission for you to periodically charge the Cardholder's Card for recurring goods or services provided.

"Switching Provider" means Paymark, ENZ, Mastercard Asia/Pacific Pte Ltd or Windcave Limited and any other entity that has agreed with us to provide Switching Services to our merchants.

"Switching Services" means the routing of Transactions from you to the relevant financial institutions to facilitate Transaction authorisation and settlement.

"Sales Voucher" means any manually imprinted or EFTPOS terminal printed Transaction record.

"Services" means the services provided to you as specified in the Application Form or as otherwise agreed between the parties.

"Smartpay Rental Agreement" means the agreement between you and Smartpay Limited for the provision of terminals and related services as part of ASB Accept.

"Subsequent Term" means, in respect of a Fixed Term Agreement, each further period equal to the term of the Initial Term for which this Agreement extends pursuant to clause 2.2, or such other period as otherwise agreed in writing by the parties.

"Tipping Transaction" means a Card Present Transaction effected through an EFTPOS terminal in respect of which the Cardholder authorises a tip for services provided by you to that Cardholder.

"Transaction" means a transaction where a Card is used to pay you for goods or services.

"UnionPay" means UnionPay International Co. Ltd. and any of its related companies.

"UnionPay Card" means a card issued pursuant to and in accordance with a licence granted by UnionPay and which bears, among other things, the word "UnionPay". Some banks issue dual-branded cards, which display a UnionPay logo and also a Visa or Mastercard logo. In a Card Present Transaction or MOTO Transaction, if a dual-branded card displays a Visa logo, the card is then processed as a Visa Transaction, or if it displays a Mastercard logo, the card is then processed as a Mastercard Transaction.

"Valid" means in respect of:

- (a) a Card, a Card that is not expired and not listed with a card issuer as being lost or stolen;
- (b) a Sales Voucher or Credit Voucher: a Sales Voucher or Credit Voucher, as the case may be, that has been completed in accordance with this Agreement, does not breach any provision of this Agreement and contains any other information that we, at any time, notify you should be recorded on it; and
- (c) a Transaction: a Transaction which has been completed in accordance with this Agreement, does not breach any provision of this Agreement and is not deemed to be an invalid Transaction pursuant to clause 6.

"Visa" means Visa International Service Association and

any of its related companies.

"Visa Card" means a card issued pursuant to and in accordance with a licence granted by Visa and which bears, among other things, the word Visa.

"we", "our" and "us" means ASB Bank Limited.

"you" means the person we approve as the merchant in the Application Form. If the merchant is more than one person, "you" means each person separately and all of them together.

1.2 Interpretation: In this Agreement, unless the context requires otherwise:

References to an **agreement** or document includes such agreement or document as may be amended, modified or supplemented from time to time.

References to **clauses** and **Schedules** are to clauses of and Schedules of this Agreement.

Derivatives of any defined word or term have a corresponding meaning.

The **headings** to clauses and paragraphs shall be ignored in construing this Agreement.

The word **including** and other similar words do not imply any limitation.

A reference to any **legislation** includes a reference to that legislation as from time to time amended, re-enacted or substituted, includes regulations, orders in council and other instruments from time to time issued or made under that legislation and, unless otherwise stated, is a reference to New Zealand legislation.

All **moneys** to be paid to you under this Agreement shall be paid in New Zealand currency to the Deposit Account at the Account Bank.

An **obligation not to do anything** includes an obligation not to suffer, permit or cause that thing to be done.

References to **paragraphs** are to paragraphs of the relevant Schedule.

Any **party** to this Agreement includes its successors and permitted transferees and assigns.

References to a **person** includes an individual, body corporate, an association of persons (whether corporate or not), a trust and any other entity (in each case, whether or not having a separate legal personality).

The plural includes the **singular** and vice versa.

1.3 Agreement: This Agreement consists of:

- (a) these terms and conditions;
- (b) the specific terms and conditions contained in any applicable Schedule;
- (c) the Application Form; and
- (d) the Merchant Operating Guide and any other guide produced by us relating to use of the Services.

If there is any inconsistency between the above documents, we shall determine in our absolute discretion which terms shall prevail.

1.4 Additional Services: If we agree in writing that you may process additional Transactions or that we may provide you additional Services not selected in the Application Form, the terms of the relevant Schedule applicable to those Transactions or Services will be deemed to apply to you from the date of such written agreement.

1.5 Supplemental Agreements: If the processing of Transactions under this Agreement requires you to have access to the payment system operated by Paymark, this Agreement is supplemental to, as applicable:

- (a) the Paymark Tripartite Agreement, which together with this Agreement governs the relationship between you and us, notwithstanding anything to the contrary contained in the Paymark Tripartite Agreement; or
- (b) the Paymark Merchant Agreement and the ENZ Services Agreement, which together with this Agreement govern your use of the EFTPOS system.

1.6 Conditional provision of Services: The provision of services by us under this Agreement is conditional on you entering into, and keeping in force, the applicable agreements referred to in clause 1.5 above.

1.7 Trade Purposes: The parties agree:

- (a) the goods and services provided under this Agreement are not of a kind ordinarily acquired for the personal, domestic or household use or consumption, and are to be supplied and acquired in trade; and
- (b) to contract out of the provisions of the Consumer Guarantees Act 1993 to the maximum extent permitted by law if, notwithstanding (a), such Act were deemed to apply.

1.8 Joint and several obligations: Where "you" consists of more than one person, your obligations under this Agreement shall be both joint and several.

2. Term

2.1 Term: If the Application Form is approved by us, this Agreement shall commence on the date of the Application Form and shall continue:

- (a) if this Agreement is a Fixed Term Agreement, for the Initial Term and each Subsequent Term until terminated in accordance with clause 2.2 or clause 10; or
- (b) if this Agreement is an Open Term Agreement, until terminated in accordance with clause 10.

2.2 Automatic Extension: If this Agreement is a Fixed Term Agreement and unless you give us at least 10 Business Days' written notice of termination before the end of the Initial Term or any Subsequent Term, as the case may be, at the end of the Initial Term this Agreement will automatically be extended for further periods equal to the term of the Initial Term until terminated in accordance with clause 10.

3. Services Provided by us

3.1 Services: Subject to the terms of this Agreement, we will provide you with the Services specified in the Application Form, or as otherwise agreed in writing by the parties from time to time.

3.2 Our Obligations: We will:

- (a) accept all Valid Transactions, Sales Vouchers and Credit Vouchers issued by you relating to this Agreement;
- (b) supply you with imprinters, Sales Vouchers and other supplies including Card decals and promotional material upon such terms and conditions as agreed from time to time between you and us; and
- (c) forward to you once each calendar month a separate statement showing the aggregate amount of all Transactions processed during the previous month.

3.3 Settlement:

- (a) We shall credit your Deposit Account in respect of a Valid Transaction accepted by us, on the Business Day

of its deposit with us, with an amount equal to the amount debited to the Cardholder's Card in respect of that Valid Transaction.

- (b) Funds deposited into the Deposit Account in relation to a manually printed Valid MOTO Transaction may not be available until three Business Days after the lodgement date. For all other types of Valid Transactions, if we are also the Account Bank funds will be available on the same Business Day if effected prior to your EFTPOS settlement cut-off time for that Business Day or the following Business Day if effected after your EFTPOS settlement cut-off time. If we are not the Account Bank such funds may not be processed by the Account Bank until the following Business Day and will become available in accordance with the Account Bank's normal policies and procedures.
- (c) We are under no obligation to make any payment to you or any other person, or to do any other act, in respect of a Transaction which is not Valid.

3.4 We reserve the right to refuse to process Transactions made using equipment that is faulty or likely to affect the quality or integrity of Transactions, whether or not it is certified by us or the relevant Switching Provider (as applicable).

4. Your Obligations

4.1 General Undertakings: You must:

- (a) at all times observe the provisions of this Agreement and the Paymark Tripartite Agreement and the Paymark Merchant Agreement and the EFTPOS Services Agreement and any other relevant agreement with a switching provider (as applicable);
- (b) at all times observe and comply with all applicable Card Scheme Rules, and not take, or fail to take, any action that would result in us violating any Card Scheme Rule;
- (c) implement and comply with the PCI Security Standards. You must provide evidence of compliance with the PCI Security Standards of the type we specify on request by us;
- (d) not make any warranty or representation whatsoever in relation to any goods or services supplied by it which may bind us or any Card Scheme;
- (e) display prominently in your place or places of business the Card decal insignia supplied;
- (f) not use any advertising or promotional material in relation to any Card except as authorised us. You shall use advertising or promotional material only to indicate which Cards are acceptable as payment and shall not infringe upon Card Scheme marks or logos in such a way as to create the impression that your goods or services are sponsored or in any way affiliated to a Card Scheme;
- (g) not collect or store any Cardholder information or any sensitive account information without our consent;
- (h) keep all systems and media containing Transaction information (physical or otherwise, including but not limited to Card imprints and Sales Vouchers) in a secure manner in line with industry best practice and as specified in the PCI Security Standards and any Card Scheme data security program or requirements, to prevent access by or disclosure to anyone other than as permitted by clause 4.1(i). You must destroy in a manner that will render the data unreadable all

such media that you no longer deem necessary or appropriate to store;

- (i) not sell, purchase, provide or exchange any Cardholder information obtained by reason of a Transaction to any third party, other than:
 - (i) your authorised personnel;
 - (ii) us;
 - (iii) the relevant Card issuer;
 - (iv) the relevant Card Scheme;
 - (v) the relevant Switching Provider;
 - (vi) any person authorised to receive such information in any applicable Schedule; or
 - (vii) as required by law,and in each case in accordance with all applicable laws;
- (j) permit us, the Card Schemes or the relevant Switching Provider or any of their respective employees, contractors or agents access to your premises at any time during normal business hours for the purpose of conducting an on-site inspection or investigation to check compliance with this Agreement or for the purposes of compliance with the relevant Card Scheme Rules;
- (k) provide us with all information and assistance we reasonably require to perform our obligations and to deal with any queries in relation to any Transaction or the provision of any Services, including copies of records, logs and purchase requests in accordance with the requirements set out in the Merchant Operating Guide;
- (l) inform us in writing promptly of any change to your Deposit Account or Fees Account and provide a replacement validly executed direct debit authority in relation to any new Fees Account;
- (m) notify us of any proposed change in the nature of your business by notice in writing at least five days prior to that proposed change being effected; and
- (n) notify us of any proposed change in your ownership or control by notice in writing at least 14 days prior to the proposed change being effected;
- (o) not process Transactions on behalf of other merchants or third parties, unless approved by us; and
- (p) with respect to equipment used for Transactions:
 - (i) comply with the relevant equipment user guide;
 - (ii) only use equipment certified or approved by us or the relevant Switching Provider (as applicable);
 - (iii) properly care for such equipment and ensure that it is regularly serviced and maintained and not use any equipment that you are aware is malfunctioning;
 - (iv) ensure that equipment is used in accordance with your agreements with us and the equipment supplier and any operating instructions from the equipment manufacturer and all relevant laws, and not move equipment from a registered location to any other location without our consent; and
 - (v) without limiting any other clause of this agreement, allow our employees, contractors, or agents to enter your premises as reasonably required by us to install, inspect, maintain,

modify, and remove equipment we own or supply and inspect the condition and operation of equipment owned by others; and

- (vi) if your equipment is provided as part of ASB Accept, only use your equipment and associated software in accordance with the requirements of the Smartpay Rental Agreement or the ENZ Services Agreement (as applicable).

4.2 Undertakings relating to Transactions: You will:

- (a) not accept a Transaction for providing cash to a Cardholder in lieu of, or in addition to, providing goods or services;
- (b) not refuse to accept any Valid Card unless otherwise agreed between the parties or provided for in this Agreement;
- (c) lodge all Credit Vouchers with us within three Business Days after issue of that voucher;
- (d) not apply a surcharge to a credit Card Transaction that does not bear a reasonable relationship to your cost of accepting the applicable Card. Any surcharge must be clearly disclosed to the Cardholder at the time of purchase as a surcharge by you;
- (e) not require, or post signs (whether at its place of business, on its website or elsewhere) indicating that you require, a minimum amount below which, or a maximum amount above which, you shall refuse to accept an otherwise Valid Card;
- (f) establish a fair policy for the exchange or return of merchandise paid for by the use of a Valid Card and give credit upon each return, not in cash but by the issue of a Credit Voucher; and
- (g) comply with all relevant laws and contractual requirements in:
 - (i) carrying on your business;
 - (ii) entering into transactions; and
 - (iii) performing your obligations under this Agreement.

4.3 Cardholder data breaches:

- (a) You must have an incident response plan that at all times meets the requirements of, and which you review and test in accordance with, the PCI Security Standards.
- (b) If you become aware of any confirmed or potential unauthorised access to Cardholder information processed or held by you or any third party on your behalf, you:
 - (i) must;
 - (A) notify us immediately if we are not already aware;
 - (B) complete any incident report we require and provide any information we request in relation to the unauthorised access or your compliance with the PCI Security Standards;
 - (C) if we require, appoint a forensic investigator or other expert who meets our requirements in relation to the unauthorised access. You agree that we may appoint a forensic investigator or other expert (at your cost) on your behalf if we choose to;
 - (D) allow our staff, agents and investigators to have full access to your systems and databases and places of business, and procure access to the systems and databases

and places of business of those third parties which are used in your business in connection with the Services, for the purposes of investigating, containing and remediating the unauthorised access;

- (ii) acknowledge and agree that:
 - (A) we may suspend any Service on becoming aware of the unauthorised access until our requirements for reactivation are, in our opinion, met;
 - (B) you are liable for all expenses, costs or losses suffered or incurred by us as a consequence of unauthorised access or any non-compliance with the PCI Security Standards identified, including the cost of any forensic investigation and any fine, fee or other cost imposed on us by any Card Scheme; and
 - (C) you will be required to fully validate your compliance with the PCI Security Standards to our satisfaction.

4.4 Refunds: If you are authorised to process refunds of Transactions, you must process any refund to the Card used for the Transaction to which the refund relates only and in accordance with our directions.

4.5 Pre-authorisation Transactions: If you are authorised to process Pre-Authorisation Transactions, in respect of each Pre-Authorisation Transaction, you must not:

- (a) request an Authorisation for any amount in excess of the total value of the applicable Transaction; or
- (b) seek Authorisation of a Transaction more than 5 days prior to the date on which payment of the Transaction is to be made.

4.6 Liability and authorisation: You:

- (a) will at all times be liable for the full amount of any chargebacks validly claimed by a Cardholder including the amount of any surcharge;
- (b) will at all times be liable for any loss, cost, expense, damage or liability resulting from any misuse of Cardholder account and Transaction information by you or any failure to keep Cardholder account and Transaction information secure; and
- (c) are liable for and irrevocably authorise us or the Account Bank, as the case may be, to debit the Fees Account with:
 - (i) any fee, cost, charge, liability or expense or other amount that becomes payable by you to us pursuant to this Agreement;
 - (ii) the total amount of any Credit Voucher issued by you;
 - (iii) any overcredits made in respect of Transactions due to errors or omissions;
 - (iv) any credits due to us arising in respect of Transactions that are not valid;
 - (v) any chargebacks effected by us pursuant to clause 7;
 - (vi) any fees, fines, penalties or other amounts imposed on us by a Card Scheme as a result of any act or omission by you, your employees, officers or agents; and
 - (vii) any other amount that is owing to us by you on any account.

4.7 Security: If requested, you must provide us with security of a type specified by us sufficient to secure your present, future and contingent obligations under this Agreement, as assessed by us.

5. Fees

5.1 Payment: You will pay us the fees set out in, and in accordance with, Schedule 3 and your Application Form.

5.2 Variation of fees: We may vary the fees, or advise you of any additional fees, applicable to this Agreement at any time by prior notice in accordance with clause 14.2.

6. Invalid Transactions

6.1 A Transaction shall be deemed invalid if:

- (a) the transaction it records is illegal; or
- (b) the applicable Card is not current or has expired at the time of the Transaction; or
- (c) the applicable Card is not a Valid Card; or
- (d) the price charged to the Cardholder for goods or services under the Transaction is in excess of your normal price as mentioned in clause 4.2(d); or
- (e) in relation to a Card Not Present Transaction, the Cardholder asserts that the Transaction is not authorised; or
- (f) the Transaction it records or any part of that Transaction is deemed to be a cash advance; or
- (g) you have failed to observe any provision of this Agreement.

7. Chargebacks

7.1 You acknowledge and agree that Authorisation of a Transaction is not a guarantee of payment by us. Accordingly we may refuse to accept, or having accepted may charge back to you, any Transaction if:

- (a) the Transaction is an invalid Transaction;
- (b) the Cardholder disputes his or her liability for any reason;
- (c) the Cardholder asserts a claim or set-off or a counterclaim;
- (d) we dispute liability for any reason;
- (e) the Transaction represents the refinancing or transfer or an existing Cardholder obligation that is deemed not to be collectable or arising from the dishonour of a Cardholder's personal cheque;
- (f) you are unable to make available to us copies and records of Sales Vouchers or other purchase requests as required by this Agreement; or
- (g) you have failed to provide the Cardholder with the goods or services covered by the Transaction.

8. Indemnity

8.1 Limited liability: Subject to clause 8.2 and to the extent permitted by law, we have no liability to you for:

- (a) the failure of any card payment system or any part of a card payment system; or
- (b) the failure by any Switching Provider to comply with its obligations under an agreement with us or you; or
- (c) the failure of any EFTPOS terminal; or
- (d) the failure of any third-party e-commerce payment solutions or provider including any relevant Switching Provider.

8.2 Our indemnity: We indemnify you against all losses, claims expenses or liabilities you incur or suffer as a result of:

- (a) the failure of the card payment system; or
- (b) the unauthorised use of the card payment system; where that failure or unauthorised use of the card payment system is a consequence of our willful default or gross negligence, or of our employees or agents.

8.3 No consequential loss: To the extent permitted by law our liability under clause 8.2 shall not extend to any indirect or consequential loss or damage or any loss of business or profits you suffer.

8.4 Your indemnity: You indemnify us against any loss, cost, expense, damage or liability (whether direct, indirect or consequential) we suffer or incur as a result of:

- (a) your failure to comply with any of your obligations under this Agreement; or
- (b) any incorrect or misleading information you supply to us or any information you withhold that would have made any information provided to us incorrect or misleading; or
- (c) any other act of, or omission by, you or any of your employees, officers, or agents whatsoever (including but not limited to, the completion of a Transaction, the processing of refunds, the use of an EFTPOS terminal, damage to an EFTPOS terminal, the completion of a Sales Voucher or Credit Voucher, the collection and storage of Cardholder account and Transaction information); or
- (d) any action taken by us, a Card Scheme or a Switching Provider as a result of any act of, or omission by, you or any of your employees, officers or agents, including, but not limited to, any fees, fines, penalties or other amounts imposed by a Card Scheme on us as a result of any such act or omission; or
- (e) any dispute between any or all of you, any Cardholder and us.

9. Exclusivity

9.1 You agree that during the Term of this Agreement you shall not receive any merchant services from any other financial institution, other than from American Express Company, Diners Club International Limited, Japan Credit Bureau or JCB International, unless expressly agreed in writing by us.

10. Termination

10.1 Termination by you: You may terminate either:

- (a) the whole Agreement; or
- (b) the application of any Schedule if it no longer wishes to process the particular types of Transactions to which the Schedule applies,

by giving us 10 Business Days' prior written notice provided that, if the Agreement is a Fixed Term Agreement, you may also be required to pay a termination fee in accordance with clause 11.

10.2 Deemed termination: You will, at our election, be deemed to have terminated the whole Agreement if you:

- (a) commence processing any Transaction with another supplier and cease processing with us; or
- (b) cease to process one or more of the Cards as stipulated on the Application Form, or a type of Transaction specified on the Application Form, unless consented to by us; or
- (c) commence processing a type of Transaction listed on the Application Form without our prior written consent; or

- (d) process such volume of Transactions under this Agreement or take any other actions which, in our opinion, indicates that you intend to terminate this Agreement (in whole or in part) or intend to commence processing with another supplier.

10.3 Termination by us:

- (a) If this Agreement is a Fixed Term Agreement, we may terminate this Agreement or any part of it at the end of the Initial Term or any Subsequent Term, as applicable, by giving you written notice not later than 30 days' prior to the end of that Initial Term or Subsequent Term.
- (b) If this Agreement is an Open Term Agreement, we may terminate this Agreement or any part of it by giving you 10 days' written notice.
- (c) We may also terminate this Agreement, or any part of it, regardless of whether it is a Fixed Term Agreement or an Open Term Agreement, immediately on notice to you, if:
 - (i) you become insolvent, declared bankrupt or have applied for entry to or have been admitted to the no asset procedure under the Insolvency Act 2006; or
 - (ii) an order is made by the Court, or a resolution passed, for your winding up, or a receiver, administrator or similar officer is appointed in respect of any of your assets; or
 - (iii) you breach this Agreement; or
 - (iv) you have, in our reasonable opinion, processed an excessive number of chargebacks or fraudulent Transactions; or
 - (v) any information provided to us by you becomes false, incorrect or misleading; or
 - (vi) without our prior written consent, there is a change in the nature of your business; or
 - (vii) without our prior written consent, there is a change in your ownership or control; or
 - (viii) we consider that you or any of your employees may have been or may be likely to use any Services fraudulently or where the security or integrity of any Service or our reputation has been, or is likely to be, in our opinion, jeopardised by you or any other person; or
 - (ix) in our opinion, you are unlikely to be able to meet your payments or other obligations to us; or
 - (x) in our reasonable opinion, you are unlikely to be able to meet any applicable Card Scheme Rules; or
 - (xi) we are prohibited by any Card Scheme Rule from providing merchant services to you or are directed by any Card Scheme to terminate our relationship with you; or
 - (xii) the ENZ Services Agreement, Paymark Merchant Agreement or the Paymark Tripartite Agreement is terminated (as applicable); or
 - (xiii) we suspend or cease to offer or provide any or all of the Services to our customers generally.

10.4 Right to terminate on increase of Merchant Service Fee:

If we increase the Merchant Service Fee applicable to any Transaction type and you object to that increase in writing to us within 30 days of receipt of notice of the increase, you may terminate the whole Agreement by giving us 30 days' prior written notice.

10.5 Without prejudice: Termination of this Agreement shall be without prejudice to the rights of either party against the other in respect of any obligations remaining unfulfilled as at the date of termination.

10.6 Consequences of termination: Upon termination of this Agreement, you agree to return to us the imprinter, the imprinter plate, Card decals and promotional material and all other bank related stationary including Sales Vouchers, terminals, and any other property provided to you by us or our third-party suppliers.

10.7 Suspension: Without prejudice to our rights of termination under clause 10.3, in the event we consider that:

- (a) you or any of your employees may have been or may be likely to use any Services fraudulently or where the security or integrity of any Service or our reputation has been, or is likely to be, in our opinion, jeopardised by you or any other person; or
- (b) you are unlikely to meet your payment or other obligations to us; or
- (c) you are unlikely to be able to meet any applicable Card Scheme Rule, any requirement of the PCI Security Standards or New Zealand law; or
- (d) you have failed to comply with a request for further security under clause 4.7,

we may either:

- (e) Immediately and without notice suspend the availability of the relevant Service or Services to you; or
- (f) redirect any transaction settlement proceeds received or due to you into a suspense account, until such time as we have either:
 - (i) resolved that the reason for the suspension in this clause 10.7 has not occurred or is not likely to occur; or
 - (ii) terminated this Agreement in accordance with clause 10.3.

11. Termination Fee

11.1 Termination fee: If this Agreement is a Fixed Term Agreement and:

- (a) you terminate, or are deemed to have terminated, this Agreement, or any part of it, before the expiry of the Initial Term or any Subsequent Term, as the case may be (other than as a direct result of us having breached our obligations under this Agreement); or
- (b) we terminate this Agreement because you have breached your obligations under this Agreement; or
- (c) we terminate this Agreement under clause 10.3(c)(xii), then you will, subject to clause 11.3, pay on demand immediately to us, in addition to any other amounts that are payable by you under this Agreement, by way of liquidated damages if termination occurs:
 - (d) on or after the date falling 12 months after the date of this Agreement but prior to the final day of the Initial Term; or
 - (e) if this Agreement is extended in accordance with clause 2.2, on or after the date falling 12 months after:
 - (i) the final day of the Initial Term but prior to the final day of the immediately succeeding Subsequent Term; or
 - (ii) the final day of any Subsequent Term but prior to the final day of the immediately succeeding Subsequent Term,

an amount equal to:

- (f) the average of the 12 most recent Merchant Service Fee payments per Transaction type which were or are payable by you to us, or if fewer than 12 Merchant Service Fee payments have been or are payable by you, the average of all such Merchant Service Fee payments made or payable by you to us,

multiplied by:

- (g) the number of months remaining per Transaction type before the end of the Initial Term or the Subsequent Term, as the case may be, or if the Initial Term or the Subsequent Term has less than two months remaining,

being our current reasonable pre-estimate of damages, costs and expenses, which arise from the early termination of this Agreement.

11.2 ASB Accept termination fee: If ASB Accept has been selected as a Service on a 36 month contract or a 3 to 6 month seasonal contract and you terminate the Service before the expiry of the Initial Term of that contract, then you will, subject to clause 11.3, on demand immediately pay to us, in addition to any other amounts that are payable by you under this Agreement, \$250 plus GST for each of your terminals returned being the our reasonable pre-estimate of the cost of refurbishment of each of the terminals to market specifications.

11.3 Circumstances where no termination fee: If we are satisfied, in our discretion, that this Agreement or any part of it, is terminated due to:

- (a) you becoming insolvent, being declared bankrupt or applying for entry to or being admitted to the no asset procedure under the Insolvency Act 2006; or
- (b) your winding up or a receiver, administrator or similar officer being appointed in respect of any of your assets; or
- (c) a change in your ownership or control where we have consented to such change; or
- (d) you terminate this Agreement in accordance with clause 10.4,

then you will not be required to pay any termination fee payable under clause 11.1 or 11.2.

12. Combination and Set-Off

12.1 You authorise us, at our discretion, to combine your account with any or all other accounts whether alone or together held with us and to set off any credits in those accounts against any amount due and payable to us by you:

- (a) on your death or bankruptcy;
- (b) at our discretion, if you are in breach of this Agreement;
- (c) where funds are owing to us by reason of chargeback effected pursuant to clause 7; or
- (d) upon termination of this Agreement.

This clause does not prejudice, and is in addition to, any other right of set-off, combination of accounts, lien or other similar or related right to which we are, or may at any time be, entitled.

13. Consent

13.1 Authorisation: You authorise:

- (a) us, our agents and other third parties (whether in New Zealand or overseas) that provide services to us (together its "**Agents**") to supply to other credit providers, credit reference agencies, any applicable

Switching Provider, any applicable Card Scheme and any other parties referred to in the Schedules, any information collected and held by us and our Agents at any time in connection with this Agreement; and

- (b) other credit providers, credit reference agencies, any applicable Switching Provider, any applicable Card Scheme and any other parties referred to in the Schedules to provide any information about you to us and our Agents which we may require in connection with this Agreement.

13.2 Credit information authorisation: If you are an individual then, without limiting clause 13.1, you authorise:

- (a) our credit reference agency to:
 - (i) hold your personal information on its systems and use your personal information to provide its credit reporting services; and
 - (ii) provide your personal information to its customers when they use its credit reporting services;
- (b) us to use our credit reference agency in the future for purposes related to the provision of credit to you;
- (c) us to give our credit reference agency information about any default in your payment obligations to us; and
- (d) our credit reference agency to give information about your default in your payment obligations to us to the credit reference agency's other customer.

13.3 Acknowledgement: If you are an individual, you understand and acknowledge that:

- (a) we collect personal information about you in connection with this Agreement;
- (b) the information is being collected to:
 - (i) determine your suitability as a Card merchant and providing you with Services;
 - (ii) provide you with the use of, and information about, any of our other products and services and products and services of our related companies (whether incorporated or constituted in New Zealand or elsewhere);
 - (iii) administer and maintain any products or services provided to you by us or by our related companies (whether incorporated or constituted in New Zealand or elsewhere);
 - (iv) manage your relationship with us so, for example, we can respond to your queries;
 - (v) monitor products and services for fraud and crime detection purposes; and
 - (vi) conduct market research, data processing and statistical analysis,
- (c) You authorise us to obtain information from our related companies (whether incorporated or constituted in New Zealand or elsewhere) for the above purposes, and you authorise our related companies to provide that information to us;
- (d) the intended recipients of the information are:
 - (i) us, our related companies (whether incorporated or constituted in New Zealand or elsewhere), agents, Card Schemes, Switching Providers, other providers of credit, credit reference agencies, debt collection agencies;
 - (ii) research firms engaged by us to carry out customer surveys and conduct market research;

- (iii) other banks (including overseas banks), agents, contractors or other financial service providers assisting with international transactions and same day cleared payments;
 - (iv) the police, certain governmental agencies or other financial institutions where we reasonably believe that disclosure will assist the investigation, detection and/or prevention of fraud or other criminal offences;
 - (v) guarantors and proposed guarantors;
 - (vi) any previous or current employer of you, if we need to consider your employment history and income; and
 - (vii) any other party authorised by you,
- (e) certain laws require us to disclose information about you;
 - (f) the information is collected and held by us. Our address is 12 Jellicoe Street, Auckland, 1010. Your personal information may be held on our behalf by cloud-based information storage providers in New Zealand or elsewhere. Any information collected about you by an agent may also be held by that agent in an overseas jurisdiction. Such agents are subject to the laws of their jurisdiction, which may require the disclosure of your personal information from time to time;
 - (g) failure to provide this information or unfavourable information ensuing from any credit checks may result in us cancelling this Agreement; and
 - (h) you have rights of access to, and correction of, this information to the extent that it is not evaluative material pursuant to section 50 of the Privacy Act 2020.

13.4 Electronic Communication

- (a) You consent to us giving to you documents, notices and communications in relation to your products and services in electronic form by electronic communication through for example:
 - (i) FastNet Business or FastNet Classic; or
 - (ii) Any other internet banking system provided by us; or
 - (iii) Any application available through your mobile device approved by us for this purpose.
- (b) You agree that any such electronic communication is taken to be dispatched by us and received by you at the time it is uploaded to the relevant system.
- (c) You consent to any such documents, notices and communications being in a commonly used format (for example, PDF) and being accessible by commonly used software (for example, Internet Explorer).

14. Miscellaneous

14.1 Assignment: You cannot assign or transfer all or any of your rights and obligations under this Agreement without our prior written consent. We may assign or transfer any of our rights and obligations under this Agreement to any person.

14.2 Variations: We reserve the right to vary the terms of this Agreement (including varying the Service or Services provided to you) from time to time by providing a minimum of 14 days' notice to you in at least one of the following ways:

- (a) by direct communication;

- (b) by advice or display in our branches;
- (c) by notice in the media (such as public notices); or
- (d) by notice on our website, or by any other electronic banking channel used by the you.

14.3 Partial Invalidity: The illegality, invalidity or unenforceability of a provision of this Agreement under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.

14.4 Waivers and consents: No waiver by us of our rights under this Agreement will be effective unless it is signed in writing. Any consent under this Agreement must also be in writing signed by us. Any such waiver or consent may be given subject to any conditions we deem appropriate and shall be effective only in the instance and for the purpose for which it was given.

14.5 No implied waiver: No failure to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right.

14.6 Time: Time is of the essence for the performance by you of your obligations under this Agreement.

14.7 Survival of Covenants: Your obligations under clauses 4.1(d), (f), (g), (h), (i), (j), (k), 4.6, 5, 7, 8.4, 10.6, 11, 12 and 13 and our rights under clauses 8.1, 8.3, 12 and 13 will survive the termination of this Agreement.

14.8 System security: You agree to provide us, our service provider or a Card Scheme endorsed third party, with access to view, monitor and/or audit the pages of your website for security purposes to ensure compliance with any relevant laws or any of our requirements, a Card Scheme or the PCI Security Standards.

14.9 Compliance certification: From time to time, we may require you to provide satisfactory certification that particular Transactions comply with any relevant law or Card Scheme Rules. You may be required to meet the costs of complying with any Card Scheme programmes applicable to its business that may be introduced from time to time.

15. Governing Law

15.1 This Agreement is governed by and is to be construed in accordance with New Zealand law. The parties submit to the non-exclusive jurisdiction of the New Zealand courts.

Schedule 1 Card Present Transactions

1. Application

1.1 Application: The terms of this Schedule 1 apply to you if:

- (a) "EFTPOS", "Paper (manual imprinter)" and/or "Credit Cards" Transactions have been selected as a Transaction on the Application Form and we have approved that Application Form; or
- (b) the parties have otherwise agreed, in accordance with clause 1.4, that you may process any Card Present Transactions,

to the extent of such Card Present Transactions so selected. You acknowledge and agree that the approval by us of one type of Card Present Transaction shall not

be, and shall not be deemed to be, approval of other types of Card Present Transactions.

1.2 Supplemental: This Schedule forms part of, and is subject to, the general terms and conditions set out in the Agreement.

2. Definitions

2.1 In this Schedule, unless the context otherwise requires:

"Authorised Floor Limit" means, in relation to a Card Present Transaction, the total value of sales you are authorised from time to time to make to a Cardholder on any one occasion without our consent.

3. Your Obligations

3.1 In addition to the undertakings set out in the Agreement, you also undertake that you will:

- (a) before proceeding with a Card Present Transaction, perform the transaction utilising the highest security method available as advised by us;
- (b) obtain prior Authorisation for:
 - (i) any sale in excess of the Authorised Floor Limit in which a Sales Voucher is used, and not split sales or process more than one Transaction where the total sales would be in excess of the Authorised Floor Limit; and
 - (ii) if you are authorised to process Tipping Transactions, any Tipping Transaction.
- (c) lodge all Sales Vouchers with us within three Business Days after issue of that voucher;
- (d) use reasonable care when accepting Sales Vouchers to detect fraud or forged unauthorised signatures, including checking the signature matches the signature of the Sales Voucher;
- (e) inform the Cardholder of all terms and conditions relative to a particular Transaction and perform all obligations to the Cardholder in connection with the Transaction, prior to the banking of the Sales Voucher with us;
- (f) if in response to an Authorisation request you are advised to obtain or hold onto a Card or are given other instructions, you shall use your best efforts by reasonable and peaceful means to comply, without placing its own safety in jeopardy;
- (g) not process any Tipping Transaction unless it has been authorised by us to do so; and
- (h) if you are authorised to process Tipping Transactions, it will ensure that before accepting any Tipping Transaction:
 - (i) the Cardholder is made aware that a tip has been added and have the opportunity to decline it; and
 - (ii) the tip amount does not exceed 20% of the Transaction amount (exclusive of the tip amount).

4. Disputes

4.1 You acknowledge that any disputes that you may have with any of your customers in respect of any Card Present Transaction shall be settled entirely between you and the customer.

Schedule 2

Card Not Present Transactions

1. Application

1.1 Application: The terms of this Schedule 2 apply to you if:

- (a) any type of Card Not Present Transaction has been selected as a Transaction on the Application Form and we have approved that Application Form; or
- (b) the parties have otherwise agreed, in accordance with clause 1.4, that you may process any, or any additional, Card Not Present Transaction,

to the extent of the type of Card Not Present Transactions so selected. You acknowledge and agree that the approval by us of one type of Card Not Present Transaction shall not be, and shall not be deemed to be, approval of other types of Card Not Present Transactions.

1.2 Supplemental: This Schedule forms part of, and is subject to, the general terms and conditions set out in the Agreement.

2. Merchant Acknowledgement

2.1 You acknowledge and agree that:

- (a) by electing to process Card Not Present Transactions, you accept the increased risk that a Cardholder's identity or authority may at a later time be questioned when processing transactions where there is no physical Card is presented
- (b) you accept all risks associated with processing a Card Not Present Transaction, including all costs, loss or liability incurred by you or any other person as a consequence of the processing of that Transaction;
- (c) you accept all liability for the value of any Card Not Present Transaction where the Cardholder denies any knowledge or involvement with such Transaction; and
- (d) where a Card Not Present Transaction has not been validly authorised by the Cardholder (including where the Cardholder denies any knowledge or involvement with such Transaction) or is in some other way invalid, the value of the Transaction will be charged back to your account in accordance with clause 7.

3. Merchant's Additional Obligations

3.1 All Card Not Present Transactions: In addition to the undertakings set out in the Agreement, you also undertake, in relation to each Card Not Present Transaction, that you will:

- (a) perform all obligations to Cardholders in relation to a Card Not Present Transaction immediately after any such Transaction has been successfully completed including the dispatch or fulfilment of goods or services agreed to be supplied;
- (b) not present the Card Not Present Transaction for payment until the goods are shipped or the services are performed, unless the Cardholder has agreed to a delayed delivery of goods or performance of services that was properly disclosed to the Cardholder at the time of the Transaction;
- (c) not use any other means to process a Card Not Present Transaction if, in response to an

Authorisation request made by you in relation to that Transaction, that Transaction is declined; and

- (d) seek Authorisation of all Card Not Present Transactions;
- (e) in relation to any Recurring Transaction, immediately update Card account number details when so requested by the relevant Cardholder or the relevant Card issuing bank.

3.2 Additional undertaking for MOTO Transactions: If you are authorised to process MOTO Transactions, you undertake to display the brand marks for all relevant Card Schemes on all advertising and other promotional material associated with its mail order and telephone order business. The brand marks are to be located in close proximity to wherever payment options are presented and must comply with clause 4.1(f).

3.3 Additional undertaking for PAN Entry Transaction: If you are authorised to process PAN Entry Transactions, you undertake that you will not:

- (a) use the PAN Entry Transaction facility to process Transactions in circumstances where the Cardholder and the Card are present but the magnetic stripe or microchip on or in the Card cannot be read by the EFTPOS terminal; and
- (b) process any UnionPay debit card Transaction as a PAN Entry Transaction.

3.4 Additional undertaking for E-Commerce Transactions: If you are authorised to process any type of E-Commerce Transactions, you undertake that you will:

- (a) provide PCI Security Standards compliant, secure payment processing for transmission and processing of Card information;
- (b) maintain your website in accordance with any reasonable requirement notified to you by us;
- (c) immediately on becoming aware of any issue, fault or vulnerability with your website or payment processing remediate such issue, fault, or vulnerability; and
- (d) ensure that your website contains all of the following information:
 - (i) a complete and accurate description of all goods and services you offer;
 - (ii) your return and refund policy;
 - (iii) the currency of the purchase price for all goods and services you offer;
 - (iv) to the extent known to you, whether any export restrictions, or legal restrictions apply to any goods or services you offer;
 - (v) your delivery and fulfilment policies and terms;
 - (vi) the country in which you are permanently resident and, if a company, your jurisdiction of incorporation;
 - (vii) your privacy policy;
 - (viii) customer service contact details, including email address or telephone number, and a physical address in New Zealand for service;
 - (ix) obtain confirmation from customers that they're of age to purchase goods and services where those goods or services are subject to an age restriction; and
 - (x) a description of the method of security being used to secure Cardholder data.

4. Disputes

4.1 You acknowledge that any disputes that you may have with any of your customers customer in respect of any Card Not Present Transaction shall be settled entirely between you and the customer.

5. Survival of Covenants

5.1 Your obligations under paragraphs 2 and 4 will survive the termination of this Schedule and the Agreement.

Schedule 3 Fees

1. Transaction Fees

1.1 **Merchant Service Fee:** Each month during the term of this Agreement a fee (the "Merchant Service Fee") will be calculated. The Merchant Service Fee for each Transaction type will be the greater of:

- (a) an amount equal to the rate for that Transaction type (as specified in the Application Form or as otherwise notified to you by us, multiplied by the sum of:
 - (i) the total value of all Transactions of that type for that month; less
 - (ii) the aggregate amount of refunds for the particular Transaction type for that month; and
- (b) the minimum monthly Merchant Service Fee for that Transaction type, as specified in the Application Form or as otherwise notified to you by us.

The total Merchant Service Fee for each month is equal to the sum of each Merchant Service Fee for each Transaction type calculated in accordance with this paragraph. The amount of the Merchant Service Fee to be debited will be specified on the statement of Transactions issued following the close of business each month and mailed to you.

1.2 **Interchange Fee:** In addition to the Merchant Service Fee, if you are on an Interchange Plus pricing plan (as specified in the Application Form or as otherwise notified to you by us) a monthly interchange fee ("**Interchange Fee**") will be payable. The Interchange Fee will be the sum of the variable interchange fees for each Transaction Interchange Type calculated as follows:

- (a) if the Interchange Rate for that Transaction Interchange Type is expressed as a percentage, that percentage multiplied by the sum of:
 - (i) the total value of all Transactions of that Interchange Type for that month; less
 - (ii) the aggregate amount of refund Transactions of that Interchange Type for that month.
- (b) if the Interchange Rate for that Transaction Interchange Type is expressed as a fixed per-transaction fee, that fee multiplied by:
 - (i) the total number of Transactions of that Interchange Type for that month; less
 - (ii) the aggregate number of refund Transactions of that Interchange Type for that month.

1.3 **Direct Debit:** The Merchant Service Fee and Interchange Fee for a month will be direct debited from your Fees Account on the 10th day of the following month provided it is a Business Day. If it is not a Business Day, the Merchant Service Fee and Interchange Fee will be direct debited on the next subsequent Business Day.

2. Other ASB Products

2.1 If other optional products and services have been selected as a Service on the Application Form and we have approved that Application Form, any additional fees for those Services will be as set out on the Application Form. The fees will be payable monthly or as otherwise set out on the Application Form.

3. Variation

3.1 **We may:**

- (a) vary the Merchant Service Fee, the minimum monthly Merchant Service Fee and/or the ASB Accept Monthly Fee (as applicable); or
- (b) advise you of any additional fees payable by you in respect of this Agreement, at any time by prior written notice to you in accordance with clause 14.2 of the Agreement.

4. Construction

4.1 For the purposes of this Schedule, in relation to any Transaction type or Service agreed to be provided after the date of this Agreement, a reference to the Application Form shall be deemed to be a reference to any agreement entered into between the parties in accordance with clause 1.4 in relation to that additional Transaction or Service.

Schedule 4 mPOS

1. Application

1.1 **Application:** The terms of this Schedule 4 apply to you if:

- (a) "mPOS" has been selected on the Application Form and we have approved that Application Form; or
- (b) the parties have otherwise agreed that the mPOS Service will apply.

1.2 **Supplemental:** This Schedule forms part of, and is subject to, the general terms and conditions set out in the Agreement.

2. Definitions

2.1 In this Schedule, unless the context otherwise requires:

"mPOS" means a mobile point of sale solution, including mPOS Lite and any other ASB mPOS and incorporating the Mobile Solution and a related terminal.

"Mobile Solution" means the mobile point of sale/cash register application nominated by us and provided by a third party for use within mPOS.

3. Coverage and Suspension

3.1 **Availability:** You agree that the availability of mPOS will be subject to relevant network provider coverage.

3.2 **Termination and suspension of Mobile Solution:** We may terminate or suspend access to the Mobile Solution for the purpose of use with mPOS at any time.

3.3 **Mobile Solution:** Your use of the Mobile Solution is governed by, and subject to, separate third party service and/or license agreements. We are not party to such agreements and do not warrant or guarantee the Mobile Solution.

4. Liability

- 4.1 Our liability for mPOS:** Without limiting any other provision of the Agreement and except in instances of wilful default or fraud by us, our employees or appointed agents, to the extent permitted by law, we will not be liable to you (or any other person) for any loss, damage, claim, cost, expense, interruption, delay, non-performance or other liability arising from:
- our providing or facilitating the provision of the Mobile Solution to you;
 - any loss of Transaction data (including electronic Transaction records);
 - any failure or malfunction of your mobile device or any other hardware, software, communication link or network used by you or on your behalf to access the Mobile Solution or mPOS;
 - the use of the Mobile Solution or mPOS in a manner or for a purpose other than that intended by us or our suppliers or in contravention of any law or regulation for the time being in force;
 - the Mobile Solution becoming unavailable, for whatever reason (including but not limited to the suspension or termination of access to the Mobile Solution); or
 - any other cause that may be considered as beyond our reasonable control.

Schedule 5 Mastercard Payment Gateway Services

1. Application

- 1.1 Application:** The terms of this Schedule 5 apply to you if:
- Mastercard Payment Gateway Services (“MPGS”) has been selected on the Application Form and we have approved that Application Form; or
 - the parties have otherwise agreed, in accordance with clause 1.4, that MPGS will apply.

Supplemental: This Schedule forms part of, and is subject to, the general terms and conditions set out in the Agreement.

2. Definitions

- 2.1** In this schedule, unless the context otherwise requires:
- “Information Security Incident”** means any event that compromises the security, confidentiality or integrity of Personal Information or information systems containing Personal Information, including without limitation any unlawful or unauthorized access, acquisition, use, transmission, disclosure, alteration, destruction or deletion of Personal Information.
- “Mastercard AP”** means Mastercard Asia/Pacific Pte. Ltd and includes its related body corporates.
- “Mastercard Information”** means all information or material which is proprietary to Mastercard AP provided to you in connection with this Schedule and the Services, whether or not designated as confidential by Mastercard AP or us or which is by its nature is confidential but does

not include information that is publicly available, other than by breach of this Schedule by you.

“Personal Information” means any information about an identifiable individual collected by you, including Cardholder information, which is collected in connection with the Services.

“Process” or **“Processing”** means any operation performed upon Personal Information, such as creating, collecting, obtaining, accessing, recording, organizing, storing, altering, retrieving, using, disclosing or destroying the data.

“PSP” means a payment service provider who has agreed to provide services through which you can accept payments from Cardholders through MPGS.

“Services” means the services described in paragraph 3.1 of this Schedule.

3. Mastercard Payment Gateway Services

- 3.1** Mastercard AP, a corporation registered in Singapore, owns and operates MPGS which includes an electronic payment gateway system, through which merchants may make various electronic payment methods available to their customers. You may, on the terms and conditions set out in this Schedule, accept E-Commerce Transactions from Cardholders through MPGS via a PSP approved by us (the **“Services”**).

3.2 You undertake to:

- immediately notify us if you are or become treated as having a business establishment or fixed establishment in Singapore; and
- provide us any information we or Mastercard AP reasonably request in relation to your Singapore tax position.

3.3 You acknowledge and accept that:

- we do not guarantee the absence of breakdowns, errors, interruption, operational failures, delays or other similar causes and we shall have no liability for loss, liability, cost, damage or expense resulting directly or indirectly from any such cause.
- we will not be liable with respect to any loss, liability, cost, damage or expense arising from any loss, theft, disappearance of or damage to data that occurs during transmission. You shall bear all risk of loss of items, records, data and materials during transit from you to Mastercard AP's service delivery point (or that of Mastercard AP's agents or sub-contractors).
- In no event shall we be liable with respect to any loss, liability, cost, damage or expense arising out of a claim by you or by third parties in connection with the data, computations and services provided and/or performed by us in connection with the Services to the extent that such data, computations and/or services in relation to which such claim arises were provided and/or performed, either:
 - in accordance with your written requirements and/or instructions; or
 - in a manner which you have agreed, satisfied your requirements and/or instructions.

- 3.4** You must reasonably satisfy yourself as to the correctness and sufficiency of any information provided or identified by:

- us in relation to this Schedule; and
- Mastercard in relation to MPGS.

4. Confidentiality

- 4.1** You acknowledge that you may receive Mastercard Information in connection with this Agreement, and that you will:
- (a) not disclose the Mastercard Information, except:
 - (i) with our written consent; or
 - (ii) as required under law or regulation.
 - (b) take all steps and do all things necessary, prudent or desirable in order to safeguard the confidentiality of the Mastercard Information.

4.2 On termination of this Agreement, at any time it is agreed that this Schedule will no longer apply or at our request, you must either return to us or destroy, and certify in writing the destruction of, all Mastercard Information in your possession.

4.3 You acknowledge that the value of the Mastercard Information is such that an award of damages may not be adequate compensation if this paragraph 4 is breached. You acknowledge that, without in any way compromising our right to seek damages or any form of relief in the event of a breach of this paragraph 4, we may seek and obtain an injunction to prohibit or restrain you or your advisers from any breach or threatened breach of this paragraph.

5. Intellectual Property Claims

5.1 In acknowledging that Mastercard AP owns MPGS, you agree that if any third party makes any claim that the use of MPGS by you infringes any intellectual property rights of that third party ("IP Claim"), you will:

- (a) promptly notify us in writing after you first learn of the IP Claim; and
- (b) provide such information, assistance and co-operation as we or Mastercard may request from time to time in relation to the IP Claim.

5.2 Mastercard AP shall have full and sole discretion to defend, compromise or settle any such IP Claim on such terms as Mastercard AP thinks fit (and you must not defend, compromise or settle any claim).

5.3 Our liability with respect to each IP Claim shall be limited to the amount that we are reimbursed, paid or recover from Mastercard AP in relation to that IP Claim.

6. Personal Information

6.1 You will comply with:

- (a) all applicable privacy laws and regulations in connection with performing its obligations, responsibilities and duties under this Schedule; and
- (b) any of our privacy policies notified to you from time to time.

6.2 With respect to any Personal Information, you collect, access or hold pursuant to this Schedule, you will:

- (a) only use such Personal Information for the purposes of the Services and performing your obligations under this Agreement;
- (b) not disclose such Personal Information to any third party, except as permitted or required under applicable privacy law or regulation or this Agreement;
- (c) comply with any reasonable request or direction from us concerning the storage, security, use and disclosure of that Personal Information;
- (d) in accordance with applicable privacy law or regulation, develop and implement appropriate

procedures for complying with the rights of Cardholders (including access and correction requests);

- (e) co-operate with us to assist us in complying with our obligations under any privacy law or regulation and demonstrating such compliance, including assisting us in complying with any request or requirement relating to the rights of Cardholders; and
- (f) on termination or expiry of this Agreement, securely destroy or otherwise deal with such Personal Information in accordance with our directions.

6.3 You shall implement and maintain comprehensive written information security policies, procedures and processes that comply with all applicable privacy laws and regulations and that include technical, physical, operational and organisational measures and safeguards designed to:

- (a) ensure the security and confidentiality of Personal Information; and
- (b) protect against any actual, anticipated or suspected loss of or threats to Personal Information or unauthorized or unlawful Processing of any Personal Information and any other Information Security Incident.

6.4 If an Information Security Incident occurs:

- (a) you must immediately notify us of the Information Security Incident (and in any event no later than 24 hours after the Information Security Incident first occurs);
- (b) to the extent you are required to, or otherwise intend to, notify any regulatory authority and/or any Cardholder whose Personal Information may have been affected by the Information Security Incident, you must promptly advise us that you intend to, or have notified such regulatory authority or Cardholder(s); and
- (c) you must investigate and put in place measures to prevent a recurrence of such Information Security Incident; and
- (d) you must co-operate with us to the extent that we require any further information in relation to the Information Security Incident or wish to conduct an investigation or audit.

6.5 You must provide any information reasonably requested by us to demonstrate your compliance with paragraphs 6, 7 and 8 of this Schedule.

7. Mastercard's use of Personal Information

7.1 You acknowledge that Personal Information will be made available to Mastercard AP in relation to or in the course of the parties performing their obligations under this Schedule.

7.2 Mastercard AP may use Personal Information provided to it in relation to the provision of MPGS for the following purposes:

- (a) the provision of MPGS to us, payment service providers (including the PSP), and merchants, including protecting against or preventing actual or potential fraud, unauthorized transactions, claims, or other liability;
- (b) the processing and/or resolving of chargebacks or other disputes;
- (c) analysing or improving MPGS, including the security of processing transactions;

- (d) providing other products or services, including those involving data analytics, to us or other third parties, using aggregated and anonymized information;
- (e) preparing and furnishing compilations, analyses and reports using aggregated and anonymized information; and
- (f) any activity for which adequate consent in compliance with all applicable laws and regulations has been provided by the Cardholders to whom the Personal Information relates.

7.3 Mastercard AP may disclose Personal Information provided to it in relation to the provision of MPGS:

- (a) with any of its related body corporates, or any of its third-party suppliers to enable Mastercard AP to provide MPGS; and
- (b) in order to comply with applicable legal requirements, including, as may be required or requested by any judicial process or governmental agency having jurisdiction over Mastercard and/or any of its related body corporates, including assisting law enforcement agencies by responding to requests for the disclosure of Personal Information, in accordance with applicable laws and regulations.

7.4 Mastercard AP may transfer, store and Process information in Mastercard AP's regional centres which are currently located in Australia and which may change from time to time and as such this may require Mastercard AP to transfer data outside of New Zealand or outside of the country where any data subject is based.

7.5 Mastercard AP may Process Personal Information as permitted by the Mastercard Standards even if not expressly set out in this Schedule.

8. Disclosure and consent

8.1 With respect to the Personal Information that may be made available to Mastercard AP in relation to or for the purposes set out under this Schedule, you must:

- (a) satisfy the requirements of any applicable laws or regulations in relation to the use, Processing and disclosure of such Personal Information to Mastercard AP; and
- (b) provide all assistance and copies of relevant documentation reasonably requested by Mastercard AP or us in order to enable Mastercard AP and/or us to comply with applicable laws and regulations in relation to Mastercard AP's Processing of such Personal Information.

8.2 Without limiting paragraph 8.1, and to the extent required under applicable laws and regulations, in relation to Mastercard AP's use, disclosure and Processing of Personal Information as set out under paragraph 7 of this Schedule, you must ensure that each Cardholder:

- (a) has given proper consent to Mastercard AP's use, disclosure and Processing of Personal Information;
- (b) is informed of any rights that the individual has, including to:
 - (i) request access to and receive information about the Personal Information maintained by Mastercard AP;
 - (ii) update, delete, block and correct Personal Information;
 - (iii) withdraw any consent previously provided or object at any time on legitimate grounds to the Processing of Personal Information;

- (iv) limit the Processing of Personal Information by Mastercard AP including the choices and means for doing so; and

(c) is properly informed:

- (i) that the Personal Information may be processed outside the country of card issuance, your location or the location of the PSP; and
- (ii) about the categories of recipients of Personal Information.

8.3 You must:

- (a) ensure all of your instructions to Mastercard AP related to the Processing of Personal Information are in accordance with the laws and regulations that apply to you;
- (b) take reasonable steps to ensure that Personal Information you provide to Mastercard AP is suitable for its intended use and is accurate, complete and current;
- (c) provide all assistance and copies of relevant documentation reasonably requested by Mastercard AP and/or us in order to enable Mastercard AP to comply with applicable data protection law in relation to Mastercard AP's Processing of Personal Information with respect to MPGS; and
- (d) cooperate with Mastercard AP and/or us (as the case may be) in promptly responding to any access, correction and/or deletion requests that may be made directly to Mastercard AP, or to us.

9. Termination

9.1 In addition to the termination rights in clause 10.3 of this Agreement, we shall be able to terminate or suspend this Agreement or any part of it, regardless of whether it is a Fixed Term Agreement or an Open Term Agreement, immediately on notice to you, if:

- (a) you are or become:
 - (i) a country, entity or individual designated by the US Government (or any other government that regulates Mastercard AP or any of its relevant related body corporates) as a country, entity or individual with which it is prohibited to do business including, without limitation, any country, entity or individual on the Office of Foreign Assets Control of the US Department of Treasury List as updated and amended from time to time (the "OFAC List"); or
 - (ii) owned or controlled by any of the countries, entities or individuals on the OFAC List;
- (b) Mastercard AP is prevented from providing MPGS, or we are prevented from providing the Services, due to a change in applicable law or regulation; or
- (c) we cease to hold a licence in respect of MPGS under which we can provide you the Services.

Keep in touch

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