

Terms and Conditions

These Terms and Conditions apply to the use of Payment Services provided by SPS ("Pin Payments"). By applying to become a Registered user of any Payment Services operated by Pin Payments, You shall be deemed to have read, accepted and agreed to be bound by these Terms and Conditions.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Terms and Conditions, unless the context otherwise requires:

1.1.1 "

Agreement Dispute

" has the meaning given in clause [25.1](#);

1.1.2 "

Application Form

" means a form prescribed by Us to be used by You, which will request the information that is required for the capacity in which You seek Registration;

1.1.3 "

Authorisation

" means:

- (a) an authorisation, consent, right, certificate, licence, permit, declaration, exemption, notarisation or waiver, however described (including any renewal or partial renewal); and
- (b) any authorisation or consent regarded as given by a Government Agency where, in relation to something that can be prohibited or restricted by law if the Government Agency takes action within a specified period, that period expires without that action being taken.

1.1.4 "

Banks

" means the financial institution(s) and/or Card Schemes with which SPS has entered into arrangements to provide the Bank Services;

1.1.5 "

Bank Services

" means the merchant acquiring services provided by the Banks to Us for the acceptance and processing of Card Transactions;

1.1.6 "

Banking Day

" means a day on which banks are open for general banking business in New Zealand, except for Saturdays, Sundays and national public holidays;

1.1.7

"Bulk Electronic Clearing System"

means a system that coordinates and administers recurring or one off electronic debit and credit payment instructions and facilitates the exchange and settlement of electronic transactions between participants;

1.1.8 "

Card

" means a card that has been designated by the issuer as a card issued by a Card Scheme as advised by the Banks;

1.1.9 "

Cardholder

" means the Person in whose name the Card has been issued;

1.1.10 "

Card Schemes

" means, unless otherwise agreed by the parties, issuers of Visa, MasterCard, American Express, JCB (Japan Credit Bureau), Diners Club and/or UnionPay;

1.1.11 "

Card Scheme Rules

" means the rules and regulations which regulate participants in the Card Schemes;

1.1.12 "

Chargeback

" is the reversal of a sales Transaction;

1.1.13 "

Controller

" means, in relation to a Person:

(a) a receiver, receiver and manager, administrator or liquidator (whether provisional or otherwise) of that Person or that Person's property; or

(b) anyone else who (whether or not as agent for the Person) is in possession, or has control, of that Person's property to enforce an Encumbrance;

1.1.14 "

Corporations Act

" means the Corporations Act 2001 (Cth.);

1.1.15 "

Crime Authority

" includes Police Agencies, Cybercrime Authorities and organisations policing financial crime;

1.1.16 "

Customer

" means a customer of Yours who wishes to purchase goods or services from, or otherwise make a Payment to, You;

1.1.17 "

Data Breach

" means any occurrence which results in the unauthorised access by a Third Party to confidential data relating to Card Transactions stored by You or any entity engaged by You to provide storage or transmission services in respect of that data;

1.1.18 "

Deposit Account

" is a bank account nominated by You or a related 3rd party of Yours into which payment funds are to be deposited;

1.1.19 "

Data Security Standards

" means the Payment Card Industry Data Security Standards ("PCIDSS") mandated by the Card Schemes for the protection of Cardholder details and Transaction information, and any additional or replacement standards of which You are advised from time to time;

1.1.20 "

Disclosing Party

" has the meaning given in clause [27.1.1](#);

1.1.21 "

Disclosing Party's Information

" has the meaning given in clause [27.1.1](#);

1.1.22 "

Dispute

" has the meaning given in clause [6.6](#);

1.1.23 "

Dispute Notice

" has the meaning given in clause [25.1](#)

1.1.24 "

Encumbrance

" means an interest or power reserved in or over an interest in an asset, including any retention of title;

(a) an interest or power created or arising in or over an interest in an asset under a bill of sale, mortgage, charge, lien, pledge, trust or other similar instrument, device or power; or

(b) any other adverse right, title or interest of any nature, by way of security for the payment of a debt or the performance of any other obligation,

and includes any agreement or arrangement (whether legally binding or not) to grant or create any of the above;

1.1.25 "

Engagement

" means the engagement of Us by You to provide You with access to the Payment Service in accordance with these Terms and Conditions;

1.1.26 "

Execution Date

" means the date of execution of the Application Form by You;

1.1.27 "

Force Majeure Circumstance

" means, in respect of a Person, any circumstance or event which, despite using all reasonable endeavours, that Person is unable to control, including any act of God, flood, fire, damage caused by lightning, storm or tempest, rains falling during normal dry seasons, industry-wide strikes, or industry-wide lockouts or other industry-wide industrial disturbances, acts of war or terrorism, civil disturbance or any government enactments;

1.1.28 "

Implied Term

" has the meaning given in clause [24.1.1](#);

1.1.29 "

Insolvency Event

" means in relation to You or Us, any one (1) or more of the following events or circumstances:

(a) being in liquidation or provisional liquidation or under administration;

(b) having a Controller or analogous Person appointed to it or any of its property;

(c) becoming an insolvent under administration, as defined in the Corporations Act; or

(d) entering into a formal compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by Us;

1.1.30 "

Loss

" includes any loss, claim, action, liability, damage, cost (including any cost between solicitor and own client), charge, expense, outgoing, payment of any kind or character which a party pays, suffers or incurs or which a party is liable to suffer or incur;

1.1.31 "

Marks

" has the meaning given in clause [11.1](#);

1.1.32 "

Payment

" means funds paid by a Customer as part of a Transaction;

1.1.33 "

Payment Service

" means the SPS "Pin Payments" system or other such SPS system that provides a mechanism for accepting Payments from Customers on Your behalf;

1.1.34 "

Person

" includes an individual, firm, body corporate, unincorporated body or association, partnership, joint venture and any government agency or authority;

1.1.35 "

Personal Identification Number

" means the personal identification number allocated by the Banks, a Card issuer or personally selected by the account holder;

1.1.36 "

Personal Information

" refers to information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, which is received by You from any source as a consequence of the performance of the rights and obligations under this Agreement;

1.1.37 "

Privacy Law

" means all legislation and principles and industry codes or policies, relating to the collection, use, disclosure, storage and granting of access rights to Personal Information;

1.1.38 "

Refund

" means the partial or full crediting of a Card Transaction;

1.1.39 "

Registered

" means granted a registration to use the Payment Service in accordance with clause [19.2](#), which registration has not subsequently been cancelled and "

Registration

" has a corresponding meaning;

1.1.40 "

Related Body Corporate

" has the meaning given to it in the Corporations Act;

1.1.41 "

Relevant Law

" means any:

(a) statute, ordinance, code or other law including regulations and other instruments under them; and

(b) any code of practice, guidelines or standards issued by relevant regulators or industry bodies, whether or not having the force of law;

1.1.42 "

SPS

" means Southern Payment Systems Pty Ltd (ACN 154 451 582), an Australian company with its registered office at Level 4, 147 Collins Street, Melbourne VIC 3000, the provider of the Payment Services to You;

1.1.43 "

SPS Fee

" means the amount charged by Us to You in respect of Transactions and/or Your Registration, and as published from time to time on the Payment Service, as notified in writing by Us to You from time to time;

1.1.44 "

Term

" has the meaning given in clause [13](#);

1.1.45 "

Terms and Conditions

" means these terms and conditions as may later be amended or supplemented by Us and published from time to time on the Payment Service, as notified in writing by Us to You from time to time;

1.1.46 "

Third Party

" means any party that is not Us or You;

1.1.47 "

Transaction

" means a transaction between a Customer and You, utilising the Payment Service;

1.1.48 "

Transaction Receipt

" means a document used to evidence a Transaction;

1.1.49 "

We

", "

Us

" and "

Our

" refer to SPS, the provider of the Payment Services to You; and

1.1.50 "

You

" and "

Your

" means the Person to whom the Payment Service is provided by Us.

1.2

Interpretation

In these Terms and Conditions:

1.2.1 singular includes plural and vice versa and any gender includes every gender;

1.2.2 a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;

1.2.3 references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;

1.2.4 references to months mean calendar months;

1.2.5 references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;

1.2.6 references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;

1.2.7 headings are used for convenience only and are to be disregarded in the interpretation of these Terms and Conditions;

1.2.8 where any word or phrase is given a defined meaning another grammatical form of that word or phrase has a corresponding meaning;

1.2.9 the words "includes" and "including" are not words of limitation and shall be read as "includes, but is not limited to" and "including, but not limited to" respectively;

1.2.10 each paragraph or sub-paragraph in a list is to be read independently from the others in the list;

1.2.11 a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time; and

1.2.12 a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

2.

APPROVAL TO USE PAYMENT SERVICES

2.1

You acknowledge that:

2.1.1 the operation of this Agreement is conditional on one (1) or more of the Banks approving an application from Us for Us to provide the Payment Services to You; and

2.1.2 in relation to information provided by You to Us in connection with Your application:

(a) We may provide that information to the Banks;

(b) the Banks may rely on such information as being complete, accurate and not misleading or deceptive;

(c) the Banks are not obliged to verify the completeness or accuracy of the information it receives from Us; and

(d) We will validate information provided by You using public and privately available information sources;

2.1.3 the Banks may obtain from any Card Scheme or a Person who is involved in any Card Scheme, any credit reporting agency or any other Person, information about Your merchant history or Personal Information about You, a Related Body Corporate, Your officers, employees or agents for any purpose relating to the operation of those Card Schemes and the Banks can use any such information to assess an application from Us under clause [2.1.1](#);

2.1.4 the Banks can disclose information about Your merchant history and relevant Personal Information in the following circumstances:

(a) to any Card Scheme or to any Person who is involved in any Card Scheme, information about You for any purpose related to the operation of those Card Schemes, Card fraud detection agencies (including information about termination of merchant Payment Services and reason(s) for termination of the Bank Services); and

(b) where the law requires or permits the Banks to do so;

2.1.5 the decision whether to approve an application from Us under clause [2.1.1](#) is at the Banks' sole discretion and the reason for any decision which is made will not be given to You;

2.1.6 approval by the Banks are specific to Us providing Payment Services to You and does not in any way constitute a representation by the Banks that You will be able to use the services of another payment service provider or of the Banks directly should You cease using Our Payment Services for any reason; and

2.1.7 any information obtained by Us or the Banks during assessment of an application under clause [2.1.1](#) is and remains confidential to Us or the Banks and will not be shared with You. The Banks are bound by Card Scheme Rules and all correspondence and discussions between Card Schemes and the Banks are confidential as between the Banks and the Card Schemes.

2.2

You represent and warrant that:

2.2.1 any information You provide to Us in connection with an application for Us to provide the Payment Service is complete, accurate and not misleading or deceptive; and

2.2.2 if You have disclosed Personal Information to Us in connection with the application under clause [2.1.1](#), You have obtained the relevant individual's prior consent to the disclosure and otherwise complied with Your obligations under Privacy Law; and

2.2.3 You are able to satisfy Your obligations and responsibilities under this Agreement.

2.3

You acknowledge and agree that:

2.3.1 We are authorised to obtain from Third Parties financial and credit information relating to You in connection with Our decision to approve Your application and in respect of Our continuing evaluation of Your financial and credit worthiness; and

2.3.2 Any information collected may be disclosed by Us to the Banks; and

2.3.3 Where We believe inaccurate or misleading information has been provided by You for fraudulent purposes, Your information will be provided to the relevant Crime Authority who may initiate investigations including traces of bank account information provided by You;

2.4

The Parties agree that no Party is or will be bound by this Agreement unless and until one (1) or more of the Banks have confirmed approval for Us to provide the Payment Services to You.

3.

RESTRICTED BUSINESS TYPES

3.1 Compliance with Card Scheme Rules restricts Us from accepting applications or providing Payment Services to businesses offering the following:

- (a) adult or sexually oriented products or services;
- (b) gambling or gaming services of any kind;
- (c) tobacco, tobacco related products, electronic cigarettes and vapour ingestion devices;
- (d) airlines;
- (e) illicit drugs;
- (f) pharmaceuticals sourced from outside New Zealand;
- (g) services or products which may be considered illegal in nature;
- (h) services or products that infringe on the legal rights of another party

4.

YOUR OBLIGATIONS

4.1

General

You must:

4.1.1 immediately notify Us of any change to Your financial position which may affect Your ability to perform Your obligations under this Agreement;

4.1.2 update Personal Information, Deposit Account and other information required by Us to deliver the Payment Service and ensure accuracy of this information at all times;

4.1.3 not carry on business in a place which has not been approved by Us and must not move Your place of business without Our prior written consent;

4.1.4 not change Your business name or ownership of Your business without giving Us prior notice and not substantially change the type of goods and services You sell without Our prior written consent;

4.1.5 only submit a Transaction where You are the supplier of the goods and/or services;

4.1.6 only use the Payment Service for goods and services explicitly outlined in Your application;

4.1.7 indicate Your acceptance of all Cards issued by the Banks (and approved for Your acceptance) whenever You communicate payment methods You accept to Your customers;

4.1.8 not engage in activities that harm the Banks' business or brand or indicate or imply that You prefer, directly or indirectly, any other payment products over the Cards approved for acceptance by You;

4.1.9 not submit Transactions on behalf of a Third Party. For the avoidance of doubt, this includes submitting Transactions for goods or services sold on another Person's website;

4.1.10 not use the Payment Service to accept payments or provide payment aggregation services on behalf of any third party;

4.1.11 work with Us to respond to Chargeback disputes lodged against You, and accept financial liability for Chargebacks;

4.1.12 allow the employees, contractors or agents of the Banks or those of any Card Scheme reasonable access to Your premises during normal business hours to check Your compliance with this Agreement, the Data Security Standards or for the purposes of the relevant Card Scheme Rules;

4.1.13 provide Us and the Banks with all information and assistance reasonably required to perform their respective obligations and to deal with any queries in relation to the Payment Service;

4.1.14 comply with all Relevant Laws and contractual requirements in performing Your obligations under this Agreement;

4.1.15 observe and implement the fraud prevention procedures set out in the manuals, guides or directions provided to You;

4.1.16 co-operate with Us and any other relevant or related party and otherwise act in good faith to assist and enable Us to provide the Payment Service;

4.1.17 work with us to recover Payment funds when incorrect or inaccurate Deposit Account details have been provided by You or Your 3rd parties;

4.1.18 not use the Payment Service for, in support of, or in connection with, any purpose contrary to any Relevant Law.

4.2

Data Security Standards

This clause applies to You if You collect Payment data directly from a Cardholder or store any Cardholder data. In addition to the other provisions of this agreement, You acknowledge and agree:

4.2.1 You must protect stored Cardholder data, regardless of the method used to store such data. Data storage also includes physical storage and security of Cardholder data. Some examples of data storage that must be secured include Access databases, Excel worksheets and hard copies of files. Storage should be kept to the minimum required for business, legal, and/or regulatory purposes;

4.2.2 You will share with Us data from any Card Transaction requested by Us and/or the Banks;

4.2.3 We may share any data from any Card Transaction with the Banks;

4.2.4 You must not store the Personal Identification Number or sensitive authentication data after authorisation (even if encrypted);

4.2.5 if We tell You that You must comply with the Data Security Standards, You must, at Your cost, successfully complete the protocols for PCIDSS within the timeframe stipulated by Us or the Card Schemes. You acknowledge and agree that if You fail to do so:

(a) We may terminate the Payment Services provided to You;

(b) You are liable for any fine imposed upon Us by the Card Schemes as a result of Your failure to comply;

(c) You are liable for any penalties which the Card Schemes levy in the event that You suffer a Card data compromise incident, and have not complied with the PCIDSS accreditation program;

4.2.6 the Banks are obliged to report all Data Breach events to Card Schemes, law enforcement agencies and/or New Zealand regulators. You grant irrevocable and enduring consent for the Banks to release details of any such Data Breach to the aforementioned bodies;

4.2.7 if You have suffered a Data Breach:

(a) You must give the relevant Banks and their agents full access to Your systems and databases to facilitate a forensic analysis to ascertain:

(i) what Card data has been compromised;

(ii) what weaknesses in the system permitted the unauthorised access to the database; and

(iii) whether Card data was created, deleted, altered, copied or manipulated in any manner; and

- (b) all costs of the forensic analysis must be paid by You; and
- (c) in order to continue processing Card Transactions, You must undergo a full PCIDSS accreditation. All costs of this accreditation exercise must be paid by You.

4.3

Your duties to Cardholders

Subject to the other provisions of this Agreement, You must:

- 4.3.1 accept any valid and acceptable Card in a Transaction;
- 4.3.2 treat Cardholders consistently and fairly, ensuring Cardholders are not put at a disadvantage when using one (1) Card Scheme over another (except where expressly permitted by law);
- 4.3.3 disclose to the Cardholder before a Transaction is completed any fee that You will charge for completing the Transaction and do it in such a way that allows a Cardholder to cancel the Transaction if they choose to do so, without the Cardholder incurring any cost;
- 4.3.4 only send Us a Transaction when You have provided the goods and services to the Customer;
- 4.3.5 not accept a Card in a credit card Transaction for the purpose of giving a Cardholder cash;
- 4.3.6 maintain a consistent refund policy which does not discriminate between Card Schemes;
- 4.3.7 perform all obligations (including supplying all goods and/or services) to the Cardholder in connection with the sale;
- 4.3.8 not sell, purchase, provide or exchange any information or document relating to a Cardholder's account number, or Card number, or a Transaction, to any Person other than:
 - (a) Us;
 - (b) the Banks;
 - (c) the Card issuer; or
 - (d) as required by Relevant Law;
- 4.3.9 if You do sell, purchase, provide or exchange any such information referred to in clause [4.3.8](#), do so in compliance with all Relevant Law including Privacy Law;
- 4.3.10 destroy any document that is no longer required to be retained, in a manner which makes the information unreadable;
- 4.3.11 take reasonable steps to ensure that the information and documents mentioned in clause [4.3.8](#) are protected from misuse and loss and from unauthorised access, modification or disclosure;
- 4.3.12 not make any representation in connection with any goods or services which may bind Us, the Banks or any Card Scheme;
- 4.3.13 not indicate or imply that We, the Banks or any Card Scheme endorse any goods or services or refer to a nominated Card in stating eligibility for goods, services, or any membership;
- 4.3.14 not accept a Card or a Transaction which is of a type You have been previously advised is not acceptable;
- 4.3.15 provide sufficient training to Your employees to ensure You meet Your obligations under this Agreement;
- 4.3.16 prominently and unequivocally inform the Cardholder of Your identity at all points of Cardholder interaction (including on any relevant website, promotional material and invoice) so the Cardholder can readily distinguish You from Us, any supplier of goods or services to You, or any other Third Party;
- 4.3.17 provide notice to any Cardholder with whom You enter into a Transaction that You are responsible for that Transaction, including for any goods or services provided, any Payment-related service enquiries, dispute resolution, and performance of the terms and conditions of the Transaction;
- 4.3.18 not attempt to dissuade or persuade Cardholders from using one (1) Card Scheme over another and/or unfairly distinguish between issuers of a Card when accepting a Transaction;

4.3.19 not refuse to complete a Transaction solely because a Cardholder refuses to provide additional identification information in circumstances where We do not require You to obtain it;

4.3.20 if You collect or store Cardholder information, comply with any Data Security Standards notified to You; and

4.3.21 not transfer or attempt to transfer financial liability under this Agreement by asking or requiring a Cardholder to waive his or her dispute rights.

4.4

Assistance to Cardholders

For the avoidance of doubt, We are not responsible for, nor required to provide support or any assistance to a Customer.

4.5

Chargeback Liability

When a chargeback is reported to SPS, funds and any related fees may immediately be withheld or withdrawn from your Pin Payments account balance or your bank account in accordance with the [Direct Debit Service Agreement](#). You accept financial liability for Chargebacks and associated fees and collection expenses incurred by Pin Payments. You request and authorise Pin Payments, through the Bulk Electronic Clearing System, to debit your Deposit Account with any amount owing in respect to Chargebacks associated with your Pin Payments account.

4.6

Refund Liability

When a Refund is processed by you, funds will be withdrawn from your Pin Payments account balance which may result in a negative Pin Payments account balance. You accept financial liability for Refunds and You request and authorise Pin Payments, through the Bulk Electronic Clearing System, to debit your Deposit Account with any amount owing in respect to Refunds associated with your Pin Payments account.

5.

WEBSITE REQUIREMENTS

5.1 Unless You are otherwise notified in writing, You must, before You accept any electronic commerce Transaction, establish and maintain at Your own expense a website that complies with the requirements set out in clause [5.2](#) and is approved by Us.

5.2 Your website must clearly display the following information:

5.2.1 Your business name (and New Zealand Business Number as applicable);

5.2.2 the address of Your approved place of business;

5.2.3 Your business and customer service contact details, including telephone numbers and an e-mail address;

5.2.4 a complete description of the goods and services available for purchase on Your website with the price clearly stated in New Zealand dollars or, if We have agreed to acquire Transactions in another currency, the price clearly stated in such other currency as agreed;

5.2.5 a clear statement that Your business is a New Zealand business and that all Transactions will be billed in New Zealand dollars or, if We have agreed to acquire Transactions in another currency, in such other currency as agreed;

5.2.6 details of Your return and refund policy, including how a Transaction can be cancelled by a Cardholder;

5.2.7 details of Your delivery times for goods and services. Delivery times are to be appropriate for the type of business carried on by You. If the delivery is to be delayed, the Cardholder must be notified of the delay and an option provided to them to obtain a refund;

5.2.8 details of any New Zealand export restrictions (if applicable);

5.2.9 details of Your privacy policy and how You intend to deal with, or share, Personal Information obtained from and about the Cardholder;

5.2.10 a description of the measures You have to maintain the security of Cardholders' account data; and

5.2.11 any other information which, by notice, We or the Banks require You to display from time to time.

5.3 You must provide Us reasonable access to view, monitor and audit the pages of Your website.

5.4 Your website Payments page(s) must be protected by Secure Sockets Layer or any other form of security method approved in writing by Us;

5.5 Your website must not contain libellous, defamatory, obscene, pornographic or profane material or any instructions that may cause harm to any individuals.

Non-internet based electronic commerce merchant services

5.6 Without limitation to any other clause of these Terms and Conditions, You must comply with any additional terms and conditions We prescribe from time to time for any non-Internet based electronic commerce merchant services We supply to You.

Recurring Transactions

5.7 You may only process a Transaction as a recurring Transaction if You:

5.7.1 have obtained Cardholder permission (either electronically or in hardcopy) to periodically charge for a recurring service;

5.7.2 retain this permission for the duration of the recurring services and make it available to Us on request; and

5.7.3 provide a simple and accessible online cancellation procedure, if the Cardholders request for the goods or services was initially accepted online.

6.

THE BANK'S SERVICES

You and We each acknowledge that, by separate agreement made between Us and the Banks, the Banks have agreed to provide the Bank Services to Us in connection with the provision by Us of the Payment Services and You acknowledge and agree that:

6.1 You may benefit from the Bank Services provided to Us;

6.2 nothing in this Agreement is to be taken to be an offer by the Banks to provide, or to be an obligation to provide, the Bank Services directly to You;

6.3 nothing in this Agreement is to be taken to be an offer by the Banks to provide, or to be an obligation to provide, any service directly to You;

6.4 the Banks are not liable to You in respect of any amount payable to You in connection with Your use of the Payment Services;

6.5 the amount of any Payment request processed as a Card Payment using the Bank Services will be paid to Us by the Banks and will be credited to Your Account by Us under the terms of this Agreement;

6.6 We are responsible for dealing with complaints or disputes relating to Payment requests and Transactions (whether stored value Payments or Card Payments) and You will refer any such complaints or disputes ("**Dispute**") immediately to Us for resolution in accordance with Our dispute resolution procedures;

6.7 You will provide all assistance required by Us to resolve a Dispute; and

6.8 the Banks are not liable (including liability for negligence) for any Loss or damage caused directly or indirectly to You by the Banks' provision, or failure to provide, the Bank Services to Us.

7.

ACCEPTING NOMINATED CARD DETAILS

7.1 This clause [7.1](#) applies if You accept Payment instructions directly from the Cardholder. You must:

7.1.1 use reasonable care to detect forged or unauthorised signatures or the unauthorised use or forgery of a Card;

7.1.2 notify Us if You become aware of or suspect fraud on the part of a Cardholder;

7.1.3 not deliberately reduce the value of any one (1) Transaction by:

(a) splitting a Transaction into two (2) or more Transactions; or

(b) allowing a Cardholder to purchase items separately;

7.1.4 establish a fair policy for dealing with refunds and disputes about Transactions and include information about that policy on Transaction Receipts as required by Us;

7.1.5 only submit a Transaction as a refund to a Cardholder if it is a genuine refund of a previous Transaction. The refund must be processed to the same Card that was used in the original Transaction and be for the original sale amount;

7.1.6 give refunds for Transactions by means of credit and not in cash or cheque;

7.1.7 not process a refund Transaction as a way of transferring funds between Your accounts;

7.1.8 if a Transaction for a sale does not cover the full amount of the sale:

(a) in the situation in which the Card is used to make a deposit or pay an instalment You may accept the Card in payment of all or part of the outstanding balance; and

(b) in any other circumstance You must obtain the balance due at the time the sale is completed in cash;

7.1.9 not state or set a minimum or maximum amount for a Transaction without Our prior written consent;

7.1.10 not ask a Cardholder to reveal their Personal Identification Number or any other secret identifier;

7.1.11 contact Us for instructions if the identification of a Cardholder or the validity of the Card is uncertain; and

7.1.12 not knowingly submit for processing any Transaction that is illegal or that You should have known is illegal.

7.2 For remote Transactions, You must:

7.2.1 take reasonable steps to verify the identity of the Person You are dealing with, in order to confirm that they are the genuine Cardholder, including by observing and implementing the recommendations in any fraud prevention material provided to You; and

7.2.2 record reasonable identification details of the Person You are dealing with, as well as the commencement and expiry dates of the Card.

8.

TRANSACTION RECEIPT

8.1 We will provide a summary Transaction Receipt to the Cardholder for each payment transaction made. You may also provide the Cardholder with a Transaction Receipt for each Transaction, but You must not charge a fee for doing so.

8.2 If You are notified that You must prepare the Transaction Receipt, You must ensure the information contained in the Transaction Receipt:

8.2.1 is identical with the information on any other copy; and

8.2.2 legibly includes the information notified to You.

8.3 You must provide Us with the Transaction Receipt and any other required evidence of the Transaction within seven (7) days if You are asked by Us to provide it.

8.4 If You wish to change Your website, e-mail address, or telephone number appearing on the Transaction Receipt, You must notify Us in writing at least 15 Banking Days prior to the change taking effect.

9.

INVALID OR UNACCEPTABLE TRANSACTIONS

9.1 A Transaction is not valid if:

9.1.1 the Transaction is illegal;

9.1.2 the signature on the voucher, Transaction Receipt or authority is forged or unauthorised;

9.1.3 the Transaction is before or after any validity period indicated on the relevant Card;

9.1.4 You have been told not to accept the Card;

9.1.5 the Transaction is not authorised by the Cardholder;

9.1.6 the particulars on the copy of the voucher or Transaction Receipt given to the Cardholder are not identical with the particulars on any other copy;

9.1.7 the price charged for the goods or services is more than the normal price charged by You;

9.1.8 another Person has provided or is to provide the goods or services the subject of the Transaction to a Cardholder;

9.1.9 You did not actually supply the goods or services to a genuine Cardholder as required by the terms of the Transaction, or have indicated Your intention not to do so;

9.1.10 the Transaction did not relate to the actual sale of goods or services to a genuine Cardholder;

9.1.11 the goods or services were supplied outside New Zealand without Our consent and the Banks' consent;

9.1.12 the Transaction is offered, recorded or billed in a currency We have not authorised You to accept;

9.1.13 this Agreement was terminated before the date of the Transaction;

9.1.14 You have not complied with Your obligations in clause [4.3](#);

9.1.15 the details are keyed into equipment and You did not legibly record on a Transaction Receipt the information required by clause [8](#);

9.1.16 it is a remote Transaction and You did not record reasonable identification details for the Cardholder and the commencement and expiry dates for the Card;

9.1.17 it is a credit Transaction in which:

(a) the amount of the Transaction or Transactions on the same occasion is more than any applicable limit notified to You;

(b) You collected or refinanced an existing debt including, without limitation, the collection of a dishonoured cheque or payment for previous Card charges; or

(c) You provide a Cardholder with cash;

9.1.18 it occurs during a period in which Your rights under this Agreement were suspended under or after this Agreement was terminated; or

9.1.19 You cannot give a Transaction Receipt as required by clause [8](#).

9.2 A Transaction for a sale or refund is not acceptable if:

9.2.1 the Cardholder disputes liability for the Transaction for any reason or makes a claim for set-off or a counterclaim; or

9.2.2 it is of a class which the Banks or Us decide, in their discretion, is not acceptable.

9.3 You acknowledge and agree that the Banks may:

9.3.1 refuse to accept a Transaction if it is invalid or unacceptable, or may charge it back to You if it has already been processed, even if We have given You an authorisation; and

9.3.2 reverse a Transaction as a Chargeback for any of the reasons in clauses [9.1](#) and/or [9.2](#) and any other reason We notify You of from time to time; and

9.3.3 without limiting the above, delay, block, freeze or refuse to accept any Transaction where the Banks have reasonable grounds to believe that the Transaction breaches New Zealand law or sanctions or the laws or sanctions of any other country.

10.

REPORTING AND SETTLEMENT OF TRANSACTIONS

You acknowledge and agree that:

10.1 the Banks have no obligation to provide You with any statement of account or details of any Transactions carried out by Us on Your behalf;

10.2 We shall be solely responsible for informing You whether a Transaction has been authorised;

10.3 the Banks are not liable to You in respect of any amount payable to You in connection with Your use of the Payment Service;

10.4 the amount of any Transaction processed by You using the Payment Service will be paid to Us in accordance with the terms of the Bank Service;

10.5 the Banks will not pay any amount owing to You in connection with Transactions submitted by You to Us for processing under this Agreement; and

10.6 We are solely responsible for accounting to You in respect of any Transactions submitted by You to Us for processing on Your behalf.

11.

USE OF CARD SCHEME LOGOS AND TRADE MARKS

You acknowledge and agree that:

11.1 the Card Scheme logos, names and holograms ("**Marks**") are owned solely and exclusively by the relevant Card Scheme;

11.2 You will not promote one (1) Card Scheme more prominently than, or in a different manner to, other Card Schemes

11.3 You will not contest the ownership of the Marks for any reason;

11.4 the Card Schemes may at any time, immediately and without notice, prohibit You from using any of the Marks for any reason; and

11.5 You will display trademarks and/or use advertising and promotional material for the Cards or which show a Card Scheme Mark in the manner the Banks approve and/or direct.

12.

REPRESENTATIONS AND WARRANTIES

12.1 You represent and warrant that:

12.1.1 by entering into this Agreement You have not been and will not be in breach of any Relevant Law or any obligation owed to any Person;

12.1.2 where applicable, You are duly authorised to enter into this Agreement and the obligations under this Agreement are valid, binding and enforceable in accordance with its terms;

12.1.3 if You are an incorporated body, You validly exist under the laws of Your place of incorporation and have the power and authority to carry on Your business as that business is now being conducted and using any name under which that business is being conducted;

12.1.4 if You, a Related Body Corporate or any officer, employee or agent of You or a Related Body Corporate has at any time been listed on a database of terminated merchants maintained

by any Card Scheme or have otherwise had the Bank Services terminated by another acquiring bank, You have disclosed that fact to us;

12.1.5 You have full legal capacity and power to undertake to comply with the Terms and Conditions and to carry out the transactions that the Terms and Conditions contemplate;

12.1.6 all corporate action has been taken that is necessary or desirable to authorise Your compliance with the Terms and Conditions and Your carrying out of the transactions that the Terms and Conditions contemplate;

12.1.7 You hold each Authorisation that is necessary or desirable to:

(a) accept and comply with the Terms and Conditions and to carry out the transactions that the Terms and Conditions contemplate; and

(b) ensure that the Terms and Conditions are legal, valid, binding and admissible in evidence, and are complying with any conditions to which any of these Authorisations is subject;

12.1.8 the Terms and Conditions constitute legal, valid and binding obligations, enforceable against You in accordance with its terms, subject to any necessary stamping;

12.1.9 neither Your acceptance of the Terms and Conditions, nor the carrying out by You of the transactions that the Terms and Conditions contemplate, does or will contravene:

(a) any Relevant Law to which You or any of Your property is subject or any order of any Government Agency that is binding on You or any of Your property;

(b) any Authorisation;

(c) any undertaking or instrument binding on You or any of Your property; or

(d) Your constitution;

12.1.10 there are no actions, claims, proceedings or investigations pending or threatened against You or by, against or before any Person that may have a material effect on the subject matter of the Terms and Conditions;

12.1.12 You are not:

(a) the subject of an Insolvency Event; or

(b) agreeing to be bound by the Terms and Conditions as trustee of any trust or settlement unless otherwise approved by Us;

12.1.12 all information supplied by You to Us, in the Application Form or otherwise, is complete, correct and is not misleading;

12.1.13 You intend to complete and are capable of completing any Transaction; and

12.1.14 You shall at all times comply with the provisions of the Terms and Conditions.

12.2 You acknowledge that We have Registered You and agreed to provide the Payment Service and to facilitate the Transactions in reliance on the representations and warranties that are made in this clause [12](#).

12.3 Despite any other provision of these Terms and Conditions, this clause [12](#) survives the expiry or termination of the Terms and Conditions.

12.4 The representations and warranties set out in this clause will be deemed to be repeated each day after the date You enter into this Agreement.

13.

TERM

The Engagement commences on the Execution Date and continues until terminated in accordance with clause [14](#) ("**Termination and Suspension**").

14.

TERMINATION AND SUSPENSION

14.1 We may terminate this Agreement or suspend Your rights under this Agreement or any part of it at any time if:

- 14.1.1 You are in breach of Your obligations under or arising out of this Agreement;
- 14.1.2 in Our reasonable opinion, the processing of Your Transactions puts Us or the Banks at risk;
- 14.1.3 You are or have engaged in conduct which exposes Us to potential fines or penalties imposed under Relevant Law;
- 14.1.4 Your business or equipment is or has been targeted by a Person engaged in fraudulent or dishonest activity whether with or without Your knowledge;
- 14.1.5 Your rights under this Agreement are the subject of a direction made under Relevant Law that the Payment Service be suspended or terminated; or
- 14.1.6 We are directed to do so by the Banks or a Card Scheme for any reason.
- 14.2 We or You may terminate this Engagement:
- 14.2.1 with immediate effect by serving written notice on the other party if the other party:
- (a) becomes unable to lawfully perform its obligations;
 - (b) is unable to pay its debts or it is presumed to be insolvent under any applicable law; or
 - (c) breaches these Terms and Conditions and fails to remedy such breach within 30 days after receiving written notice from the terminating party specifying the breach and setting out the steps required to be taken in order to remedy the breach; or
- 14.2.2 upon 30 days written notice, without reason.
- 14.3 Each party will retain any rights it may have against the other party in respect of any accrued liability or any breach or non-observance of these Terms and Conditions arising or occurring prior to the expiration or termination of the Engagement.
- 14.4 This Agreement will terminate automatically and immediately if Our registration as a payment service provider with all Card Schemes is cancelled or if Our agreement with all of the Banks for the provision of merchant services is terminated for any reason.
- 14.5 You acknowledge that We will disclose termination of this agreement for any reason to the Banks and You authorise the Banks to disclose to any Card Scheme advice of termination of this Agreement and the reasons for the termination. You acknowledge that the information concerning termination of this Agreement then becomes available to any member of the Card Schemes. This information, available to any member of the Card Schemes, may be used in assessing subsequent applications for merchant facilities.
- 14.6 This clause [14](#) survives termination of this Agreement.

15.

CARDHOLDER'S CREDITWORTHINESS

You cannot infer from the fact that a Cardholder has been issued with a nominated Card, or that a Transaction has been processed or an authorisation has been given, that We have guaranteed:

- 15.1 the Cardholder's creditworthiness;
- 15.2 the correct identity of the Cardholder;
- 15.3 that the Transaction is valid and acceptable and will not be subsequently charged back or reversed; or
- 15.4 that You have complied with Your obligations under this Agreement and You waive any right to claim that We do.

16.

RIGHTS OF EACH PARTY

16.1 You may not assign or charge Your rights under this Agreement without Our prior written consent.

16.2 We may assign any of Your obligations under this Agreement to the Banks without seeking your consent.

17.

NEW ZEALAND DOMICILE REQUIREMENTS

17.1 You acknowledge that We may only provide the Payment Services to You under this Agreement where You:

17.1.1 have a permanent establishment in New Zealand through which Transactions are completed;

17.1.2 are registered to do business in New Zealand and have an active New Zealand business registration and a New Zealand Business Number (NZBN);

17.1.3 have a local address in New Zealand for correspondence and acceptance of judicial process, other than a post-office box or mail-forwarding address;

17.1.4 pay taxes in New Zealand (where required) in relation to the sales activity; and

17.1.5 satisfy any other domesticity requirements imposed by Card Schemes from time to time.

17.2 In addition to any other right to terminate or suspend the Payment Service, We may immediately cease to accept Transactions under this Agreement where You fail to satisfy the above requirements.

18.

PAYMENT SERVICE

18.1 By way of explanation only, the parties acknowledge that the Payment Service operates as follows:

18.1.1 The Payment Service operates as described on the website at www.pin.net.au

18.2 For the avoidance of doubt, You acknowledge and agree that, in providing the Payment Service, We may or will (as the case may be):

18.2.1 monitor and/or analyse Your use of the Payment Service with the purpose of identifying transaction behaviours that may be fraudulent or inconsistent with Your transaction history or the information You have provided to Us in your application;

18.2.2 delay settlement of Your payment funds at any time should We believe there are risks associated with Your payment transactions or Your business;

18.2.3 withdraw from your settlement funds Chargeback claims which have been awarded in the cardholder's favour where those funds have been reclaimed from Us by the Banks;

18.2.4 provide Your details to the Banks or any other party necessary to provide the Payment Service;

18.2.5 notify the Banks of Your identity, Deposit Account and other details;

18.2.6 provide the Banks with details of all Transactions;

18.2.7 instruct the Banks as to the disbursement of funds paid in relation to a Transaction and/or the deduction of any fees payable, including the SPS Fee;

18.2.8 update the software which forms Payment Service from time to time;

19.

USE OF THE PAYMENT SERVICE

19.1

Use of the Payment Service

19.1.1 Use of the Payment Service is subject to the Terms and Conditions.

19.1.2 The Payment Service can only be used by You once Registered.

19.2

Registration

19.2.1 You may apply to Us to become Registered.

19.2.2 In order to be Registered, You must:

(a) submit a completed online Application Form to Us (including but not limited to providing Us with all information required by Us in order for Us to undertake a background and financial check on You) in order for Us to make a determination whether to approve Your application;

(b) inform Us of Your Deposit Account details to be used with respect to dealings on the Payment Service by the Banks; and

(c) agree to be bound by the Terms and Conditions and, in this regard, by applying to Us to become Registered You are deemed to have agreed to be bound by the Terms and Conditions.

19.2.3 We may accept or reject an application in Our sole discretion.

19.3

Cancellation of Registration

19.3.1 Your Registration may be cancelled:

(a) by Us at any time in Our sole discretion without providing any reason or cause, and We shall inform You by 5pm on the next Banking Day; or

(b) at Your request made in writing to Us by giving Us 10 Banking Days notice.

19.3.2 If You are the subject of an Insolvency Event, Your Registration will be deemed to be immediately cancelled.

19.3.3 On cancellation of Your Registration pursuant to clause [19.3.1](#) or [19.3.2](#):

(a) You will cease processing Transactions immediately, and within two (2) Banking Days remove all Card Scheme identification, logos and decals from Your website

(b) if You are a party to a Transaction which is not yet completed, You will be deemed to be in breach of that Transaction;

(c) You will be indebted to Us for the payment of the relevant SPS Fee and must pay the said SPS Fee to Us within five (5) Banking Days of the notice of termination (unless We agree otherwise); and

(d) You will cease to be Registered.

20.

FEES

20.1

SPS Fee

20.1.1 You agree to pay any SPS Fee (identified by Us as being payable by You) in respect of all Transactions processed through the Payment Service by You and/or in respect of Your Registration with the Payment Service.

20.1.2 The amount of any SPS Fee or the method of calculating any SPS Fee may be amended by Us from time to time and published on the Payment Service, as notified in writing by Us to You with at least 28 days notice.

20.1.3 Payment of the SPS Fee shall be withheld or deducted from any payment due to You or such other manner as We may publish on the Payment Service, as notified in writing by Us to You from time to time.

21.

OUR OBLIGATIONS

21.1

Our General Obligations

We must:

21.1.1 provide the Payment Service;

21.1.2 hold all licenses, insurances, approvals or other permits required by New Zealand regulatory authorities to enable Us to lawfully provide the Payment Service;

21.1.3 comply with all legislative requirements that cover the conduct of Our business in the performance of Our obligations, including any relevant regulations, codes of practice, New Zealand standards, industry standards and safety publications; and

21.1.4 other than in accordance with these Terms and Conditions, not delay payment of any funds due to any party.

21.2

Manner of Performance of Provision of Payment Service

In providing the Payment Service, We will devote sufficient attention, time and ability to the provision of the Payment Service as reasonably necessary.

21.3

Standard of Service

21.3.1 Subject to clause [24](#), We must:

(a) provide the Payment Service in a conscientious, expeditious and professional manner exercising a reasonable standard of skill, care and diligence; and

(b) keep You fully and regularly informed as to any significant matters affecting or relating to the Payment Service to the extent that it affects You.

21.4

No Warranty as to Suitability

21.4.1 We make no representations or warranties about the suitability of the Payment Service for Your purposes.

21.4.2 You acknowledge that:

(a) You have read and agree with all these Terms and Conditions; and

(b) have independently evaluated the Payment Service as being suitable for Your purposes and did not rely on any information on Our web pages or brochures or representations made by any of Our staff in reaching this determination.

21.5

Security of Cardholder Data

21.5.1 We are responsible for protecting the security of Card Holder Data (defined as a primary account number, expiry and CVV) in our possession and will maintain all reasonable administrative, technical and physical processes to protect all information regarding you and your customers that is stored in our systems from unauthorised access. However, we cannot guarantee that unauthorised third parties will never be able to circumvent those measures or use such personal information in this case. You acknowledge that you provide this personal information regarding you and your customers at your own risk.

22.

FORCE MAJEURE

22.1 Subject to clause [24.2](#), if provision of the Payment Service is delayed due to a Force Majeure Circumstance We will not be in default, nor be liable for any Loss incurred or suffered by You, for that reason only.

22.2 If provision of the Payment Service is delayed due to a Force Majeure Circumstance for a continuous period exceeding two (2) months, You may terminate the Engagement with immediate effect by serving written notice on Us.

23.

TAXES

23.1 You are responsible for the payment of any taxes, including GST, relating to the sale of your goods and services and the operation of your business. We are not responsible for the determination or payment of any taxes on your behalf.

24.

LIMITATION OF LIABILITY

24.1

Terms implied by legislation

24.1.1 Any limitation on a party's liability under these Terms and Conditions only operates to the extent permitted by law, and nothing in these Terms and Conditions purports to exclude, restrict or modify, or have the effect of excluding, restricting or modifying, any condition or warranty implied by legislation (including the Competition and Consumer Act 2010 (Cth.) and any New Zealand legislation concerning consumer protection, fair trading or the sale of goods or services) ("**Implied Term**") where to do so would have the effect of rendering the relevant provision in these Terms and Conditions void or otherwise unenforceable.

24.1.2 Subject to clause [26.1.1](#):

(a) all Implied Terms and any other conditions or warranties otherwise implied by law are excluded from these Terms and Conditions; and

(b) Our liability for a breach of any Implied Term of the kind referred to in clause [26.1.1](#) will be limited to the full extent expressly allowed for in the relevant legislation.

24.2

Consequential Loss

A party's liability for any claim in connection with the Engagement will not extend to any indirect or consequential Loss.

24.3

Duty to mitigate

Each party must take all reasonable steps to mitigate the effect on that party of any Loss for which another party may be liable.

24.4

We are not liable for Other Party Errors

We are not liable for any Loss arising from any error in connection with the Payment Service where such error results from the provision to Us of any false, misleading or incomplete information or documentation or the acts or omissions of You or any Third Party.

24.5

Limitation

Notwithstanding any other provision of these Terms and Conditions, to the extent permitted by law, neither We nor the Banks are liable to You or any other Person for any:

24.5.1 error, omission or inaccuracy with respect to the any information provided to or entered into the Payment Service by You or Your 3rd parties;

24.5.2 any failure, malfunction, fault in delivery, delay, omission, suspension, inaccuracy, interruption, termination or any other cause, in connection with the furnishing, performance, operation, maintenance, use of or inability to use all or any part of the Payment Service;

24.5.3 Loss or damage of any kind that is directly or indirectly caused by or results from any:

(a) errors or inaccuracies in information in the Payment Service or any interruption to the Payment Service;

(b) unauthorised access to or use of the Payment Service;

(c) cancellation of Your Registration; or

(d) wrongful, wilful or negligent act or omission of Us or any of Our officers, employees, agents or contractors; or

24.5.4 indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time irrespective of whether:

(a) the Loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or

(b) We or any other Person were previously notified of the possibility of the Loss or damage, whether such a claim arises in contract, tort, negligence, strict liability, contribution or under statute or otherwise and whether the claim is brought directly or as a Third Party claim.

25.

DISPUTE RESOLUTION

25.1 If a dispute arises between the parties in relation to the Engagement ("**Agreement Dispute**"), any party may by written notice to the other party specify the details of the Agreement Dispute ("**Dispute Notice**").

25.2 If a Dispute Notice is given then the parties must meet within seven (7) Banking Days and negotiate in good faith to resolve the Agreement Dispute.

25.3 If the Agreement Dispute remains unresolved 14 Banking Days after receipt of the Dispute Notice, the parties agree to submit the Agreement Dispute to mediation administered by a single mediator, which will be agreed between the Parties.

25.4 In the event the parties cannot agree on a single mediator within 28 Banking Days after receipt of the Dispute Notice, then the parties must request the nomination by the New Zealand Commercial Disputes Centre of a mediator.

25.5 All parties agree to accept the determination of the mediator without question, and to take whatever actions or pay whatever charges the mediator determines is reasonable.

26.

INDEMNITY

26.1 Each party indemnifies the other party against all claims, damages, suits, made against the other party and all Loss arising directly (except to the extent that the liability has occurred or arisen due to the negligence or unlawful act of the other party, its servant, agents or other contractors) from:

26.1.1 any breach of these Terms and Conditions by that party;

26.1.2 any negligence or unlawful action by that party, its employees, officers, agents and subcontractors;

26.1.3 any representations made by that party in breach of these Terms and Conditions; and

26.1.4 any other conduct of that party which is either not authorised under these Terms and Conditions or which is not authorised by the other party.

26.2 You indemnify Us against any and all liability to You or any Third Party where such liability results from the provision of false, misleading or incomplete information or documentation to Us by You or Your agents or representatives.

26.3 You indemnify the Banks and/or their related Bodies Corporate against all costs, claims, proceedings and demands made against the Banks and/or their related Bodies Corporate and all Loss arising directly (except to the extent that the liability has occurred or arisen due to the negligence or unlawful act of the Banks, their servants, agents or other contractors) from any breach of these Terms and Conditions by You.

27.

CONFIDENTIALITY

27.1 The parties acknowledge and agree that:

27.1.1 the property of the other party ("**Disclosing Party**") includes and will include, all confidential information and all records, documents, correspondence, lists and other material relating to the business operations, processes, finances, affairs or dealings of the Disclosing Party, its related bodies corporate and its affiliates ("**Disclosing Party's Information**"); and

27.1.2 the Disclosing Party's Information has been, and will be, obtained or developed at considerable effort and expense to the Disclosing Party.

27.2 The parties will not, during the Term or at any time thereafter (except in the proper course of providing or utilising the Payment Service or as required by legislation, law or the Disclosing Party), use or disclose to any Person any trade or business secret or any confidential information, including without limitation the Disclosing Party's Information, of which they become possessed or aware in the course of or by reason of providing or receiving access to the Payment Service.

27.3 The restrictions set out in clause [27.2](#) shall continue to apply after the Term without limitation in point of time, but shall cease to apply to information that comes into the public domain other than through an act or omission.

27.4 Upon the termination of the Engagement for any reason, each party will deliver up to the Disclosing Party or its nominees, complete with written verification (if requested), all correspondence, documents, computer records, business cards, papers and property belonging to the Disclosing Party or relating in any way to the affairs or business of the Disclosing Party which may be in the possession or under the control of each party, including any Disclosing Party's Information.

28.

NOTICE

28.1 Notices must be in writing, and delivered to a party by hand, ordinary pre-paid post, facsimile or e-mail to that party's address or to the alternate address notified to the party giving the notice.

28.2 A notice will be taken to be duly given and received if:

28.2.1 delivered by hand, on the day of delivery if delivered before 5.00pm on a Banking Day, otherwise on the next Banking Day;

28.2.2 delivered by ordinary pre-paid post, on the second Banking Day after posting;

28.2.3 delivered by facsimile or e-mail, where the transmission report states that it was sent in full and without error, on the day the transmission was received if the report states that the transmission was completed before 5.00pm on a Banking Day, otherwise on the next Banking Day.

29.

GENERAL PROVISIONS

29.1

Relationship

The parties agree and acknowledge that We are an independent contractor and that there is no employment relationship between You and Us or any Person employed or engaged by Us to assist in the provision of the Payment Service. Neither party shall hold themselves out as partner, employer, employee, agent or principal of the other party except to the extent specifically authorised by the other party in writing nor at any time bind or purport to bind the other party to any agreement or transaction nor pledge the credit of the other party in any manner whatsoever nor permit the creation of any lien over any property of the other party.

29.2

Assignment

These Terms and Conditions shall endure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

29.3

Amendment

These Terms and Conditions may be amended by Us from time to time and published on the Payment Service, as notified in writing by Us to You with at least 28 days notice.

29.4

Entire Agreement

These Terms and Conditions embody the entire understanding and the whole agreement between the parties relative to the subject matter hereof and all previous negotiations, representations, warranties, arrangements and statements (if any) whether expressed or implied with reference to the subject matter hereof or to the intentions of any of the parties hereto are merged herein and otherwise are hereby excluded and cancelled.

29.5

Warranty of Authority

Each Person executing these Terms and Conditions:

29.5.1 as attorney, by so doing, warrants to the other parties that, as at the date of execution, the signatory has not received notice or information of the revocation of the power of attorney appointing that Person; and

29.5.2 as an authorised representative, agent or trustee of a party, warrants to the other parties that, as at the date of execution, the signatory has full authority to execute the document on behalf of that party.

29.6

Severability

These Terms and Conditions shall, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

29.6.1 that provision shall, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or

29.6.2 if the provision or part of it cannot effectively be read down, that provision or part of it shall be deemed to be void and severable and the remaining Terms and Conditions shall not in any way be affected or impaired and shall continue notwithstanding that illegality, invalidity or unenforceability.

29.7

Waiver and exercise of rights

29.7.1 A waiver of a provision or of a right arising under these Terms and Conditions may only be given in writing by the party granting the waiver.

29.7.2 Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

29.8

Rights cumulative

The rights, remedies and powers of the parties under these Terms and Conditions are cumulative and do not exclude any other rights, remedies or powers available at law or in equity.

29.9

Governing law and jurisdiction

The Engagement is governed by the laws of New Zealand and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

29.10

Delivery as a deed

Subject to express provisions in these Terms and Conditions to the contrary, each party by completing and submitting the Application Form is deemed to unconditionally sign, seal and deliver these Terms and Conditions as a deed, with the intention of being immediately legally bound by them.