

# ePayments Limited Merchant Facilities Terms and Conditions

## 1. DEFINITIONS AND CONSTRUCTION

**"Acquiring Device"** means any device with communication function, which is installed by the Merchant for acceptance or processing of payments under this Agreement.

**"Acquiring Services"** means the services provided by the Company to the Merchant under this Agreement.

**"Agreement"** means the Merchant Facilities Agreement, and these Merchant Facilities Terms and Conditions entered into by the Company and the Merchant, and any amendments thereto from time to time;

**"Third Party Payment Provider"** means an organization that provides a payment platform to facilitate payments and whose services are provided to the Merchant via this Agreement.

**"Third Party Payment Platform"** means a computer software or information system developed by The Third-Party Payment Provider for provision of service under this Agreement;

**"Third Party Payment Services"** means one of the services provided by ePayments, which allows the Merchant to accept payments from the Third-Party Payment Providers' users or customers.

**"Business Day"** means a day on which banks in New Zealand and as applicable business days in the jurisdiction of the Third-Party Payment Provider;

**"Confidential Information"** includes but without limitation to any commercial or technical information relating to technology, product plans, designs, specifications, costs, finance, marketing plans, business opportunities, personnel, research and development, customer information and data, commercial secrets or know-how of any Party and information relating to the terms and conditions of the Agreement and its supporting documents which is possessed or permitted to be used by any Party to the Agreement, and is clearly marked as proprietary or confidential information or is expressly indicated as proprietary or confidential under circumstances in which such information is provided. Confidential Information includes any information disclosed verbally, visually or mechanically. All information shared between the Parties to the Agreement shall be deemed to be Confidential Information;

**"Customer Certificate"** means a document supplied to the Merchant with its Merchant Account Number and issued by ePayments, containing the identity information of the Merchant and its operation authority to use Third Party Payment Service (including the authority for certain functions including enquiries and refunds, etc.) and through which the Merchant may make a digital signature after giving electronic instruction to ePayments;

**"Electronic Commerce Transaction"** means a transaction between a Merchant and a Third-Party Payment Provider User over a network using a telephone, any mobile device, terminal, personal computer or other device to initiate such a transaction;

**"Merchant Service Fees"** means a fee payable to the Company by a Merchant based on the actual monetary amount of transactions completed through the Third-Party Payment Provider and which is set out in the Merchant Facilities Agreement;

**"Facilities"** means terminals and machines for accessing the Third-Party Payment Services provided to the Merchant by the Company, including the Terminals;

**"GST"** means Goods and Services Tax pursuant to A New Tax System (Goods & Services) Act 1999 as amended from time to time.

**"Merchant"** means a merchant that has entered into this Agreement and who has as may be necessary entered into agreements with the Third-Party Payment Providers;

**"Merchant Account Number"** means a merchant account number given to the Merchant by the Company in relation to the provision of Third-Party Payment Services;

**"NZD" or "New Zealand dollars"** means the lawful currency for the time being of New Zealand;

**"Rules"** means the rules, regulations and guidelines issued and published by ePayments regarding the use of the Facilities as the same may from time to time be amended, varied or supplemented;

**"System"** means a combination of the Facilities, computer software and other technology supplied by the Company and from the Third-Party Payment Providers that creates the platform to transact payments.

**"Transaction"** means a transaction for the sale of goods or services between the Merchant and its customer involving payment by the Customer using Third Party Payment Services processed through the Facilities;

## Construction

Unless a contrary intention appears in this Agreement, a "person" includes an individual, a corporation, a firm, sole proprietorship and a partnership (whether or not having separate legal personality); the singular includes the plural and vice versa and the masculine gender includes feminine and neuter genders and vice versa. Any reference to a clause is to a clause of this Agreement. Where applicable, the completion of obligations by the Company under this Agreement is to be read as completion of obligations by the Company for and on behalf of the Third-Party Payment Provider, including the making of payments to the Merchant.

## 2. MERCHANT AND THE PROGRAMMES

2.1. The Merchant shall at ePayments' direction from time to time display the mark or logo of Third-Party Payment Provider and the Company at the Merchant's business outlet(s) or on its promotional materials, subject always to the approval of the Merchant.

2.2. The Merchant authorizes the Company to include the Merchant's name in any directory or promotional materials produced or sponsored by the Company or any other person in connection with its services and those of the Third-Party Payment Provider, subject to the prior written approval of the Merchant.

2.3. Provided that the terms and conditions of this Agreement are observed in relation to each Transaction: -

2.3.1. The Company agrees to pay to the Merchant a sum equal to the amount of each valid Transaction (less the Merchant Service Fee specified in the Merchant Facilities Agreement) completed at any business outlet of the Merchant duly recorded on and evidenced by electronic means by the System; and

2.3.2. Correspondingly, the Merchant agrees to accept the use of Third Party Payment Services in substitution for the cash payment of the purchase price by the Third Party Payment Providers' Users under a Transaction, and such acceptance of use of Third Party Payment Services by the Merchant shall release the relevant Third Party Payment Providers' User from any obligation to pay the purchase price for such Transaction to the Merchant.

2.3.3. The Merchant agrees to pay the Terminal monthly rental fee and connection fee if specified in the Merchant Facilities Agreement.

## 3. ACCEPTANCE OF THIRD-PARTY PAYMENT PROVIDERS SERVICES

3.1. The Merchant shall promptly accept without discrimination any Third-Party Payment Provider Services presented by its customers for payment of the Merchant's merchandise or services.

3.2. The Merchant shall not collect any additional fees or charges other than those permitted at law from any Third-Party Payment Providers' Users effecting payment using that payment method through the System provided by the Company.

## 4. AUTHORISATION

Under the following circumstances, the Merchant shall obtain prior authorization from the Company from time to time before accepting Third Party Payment Providers Services:-

4.1. Where the Transaction amount is in excess of the applicable floor limit as set out in the Merchant Facilities Agreement; If the amount prescribed for a single Transaction exceeds the Merchant's floor limit as set out in the Merchant Facilities Agreement unless otherwise notified by the Company to the Merchant in writing, prior authorization must be obtained by the Merchant from the Company from time to time.

4.2. Where the Merchant has reasonable cause to believe that the Third-Party Payment Providers payment method (card, code etc.) may be a counterfeit, forged, lost or stolen, the Merchant will notify the Company;

4.3. Where the Merchant communicates to the Company that there are suspicious circumstances surrounding the presentation of a particular Third-Party Payment Providers Users' payment method (card, or code etc.); and the Merchant shall not be held liable for any claims made by the Company or the Third-Party Payment Providers' Users where the authorization of the Company has been obtained in accordance with this Clause.

## 5. RESPONSIBILITIES AND OBLIGATIONS

5.1. In providing the Acquiring Services, the Company shall use its reasonable endeavours to:

5.1.1. Pay to the Merchant a sum equal to the amount of each valid Transaction (less the Merchant Services Fee as defined in the Merchant Facilities Agreement), with the settlement of such amounts to be made within the timeframes specified in the Merchant Facilities Agreement.

5.1.2. Coordinate and communicate with ePayments to procure the normal operation of the Facilities.

5.1.3. Provide the means for information exchange between the Merchant and / or ePayments in relation to the Transactions effected through the System and record all such information transmitted.

5.1.4. Advise the Merchant, Third Party Payment Providers on issues regarding the Transactions, funds settlement and complaints arising among the Merchant, Third Party Payment Providers and / or other banks participating in the System.

5.2. The Merchant, in using the System, shall have the following responsibilities and obligations:

5.2.1. Observe the Rules and do such acts and things as may be reasonably required by the

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- Company from time to time in relation to the Third-Party Payment Service and hereunder and the usage of the System.
- 5.2.2. Provide such facilities and security protection as are necessary to ensure the normal operation of the System.
- 5.2.3. Not to unreasonably refuse the use of Third-Party Payment Providers payment method by a Third Party Payment Providers User, and not to engage in unequal treatment between Third Party Payment Providers' Users and other customers in the sales of merchandise and/or provision of services and any other benefits offered.
- 5.2.4. Handle complaints from customers and act on advices given by the Company in relation to products or services of the Merchant. The Company shall handle all other complaints with the assistance of the Merchant.
- 5.2.5. Display in an appropriate and prominent place of its business locations and on all promotional materials the marks and logos of the Company and Third Party Payment Providers, in order to inform the public that the Merchant accepts the use of the System for settling Third Party Payment Services, at the Merchant's discretion.
- 5.2.6. Assist the Company, Third Party Payment Providers in managing the network.
- 5.2.7. Accept Transactions and use the Facilities with due care and diligence.
- 5.2.8. Keep the Facilities in a safe and proper manner and indemnify and keep the Company fully indemnified for any damage or loss caused to the Facilities, except for any fair wear and tear.
- 5.2.9. The Merchant shall not make any cash refund to the customer but will process any refund in relation to a Transaction conducted by ePayments or Third Party Payment Providers Users, through the ePayments System only, unless otherwise authorised by ePayments.
- 5.2.10. Cash advances by the Merchant to a Third-Party Payment Providers' User are not allowed in all circumstances.
- 5.2.11. The Merchant shall not impose more than the reasonable cost of Third-Party Payment Services acceptance in accordance with any government authority's regulations on a Transaction for which a customer intends to use Third Party Payment Providers Platform.
- 5.2.12. The Merchant shall use the Facilities provided by the Company for the Transaction. The Merchant shall maintain a suitable environment and proper use of the Facilities.
- 6. SECURITY CLAUSE**
- 6.1. Safekeeping of password, personal identification number (PIN) and Customer Certificate under the Merchant Account Number of Merchant
- 6.1.1. Merchant shall take effective measures to properly keep its password, PIN and the Customer Certificate under the Merchant Account Number of Merchant and shall not provide them for use by or disclose to any party in any manner whatsoever. The Merchant Account Number of Merchant is a proof for the Company to confirm the identity of Merchant. Merchant shall be solely responsible for all operation under the Merchant Account Number of Merchant.
- 6.1.2. Merchant shall be responsible for managing and maintaining the password, PIN and the Customer Certificate of the Merchant Account Number of Merchant. The password set by Merchant should not be too simple to avoid any illegal use by any party. Merchant shall maintain effective technical protection for the device keeping the Customer Certificate to ensure that it is safely kept and used. Merchant shall take initiative to renew or extend the term of the Customer Certificate with the Company before its expiry.
- 6.1.3. Notification of loss of password, PIN and the Customer Certificate under the Merchant Account Number of Merchant
- 6.1.4. Temporary notification of loss
- 6.1.5. If Merchant has lost the password, PIN and the Customer Certificate under the Merchant Account Number of Merchant or such password, PIN and the Customer Certificate are subject to unauthorised use such as being stolen or assumed etc., Merchant shall immediately report the loss to the Company by telephone and complete the relevant procedures for temporary notification of loss.
- 6.1.6. Upon receipt of a temporary notification from Merchant, the Company may, after verifying the basic identity information of Merchant which remains available, proceed with the procedures for temporary notification of loss for Merchant. The temporary notification of loss shall take effect from the time at which the Company expressly notifies Merchant by telephone that "the temporary notification of loss has taken effect". Merchant shall be liable for consequences of all operations under the Merchant Account Number of Merchant before the temporary notification of loss has taken effect. The account payment function under the Merchant Account Number of Merchant will be suspended for 14 Days business days from the date on which the temporary notification of loss has taken effect, but account receivables (if any) can still be remitted into such account.
- 6.1.7. Formal notification of loss
- 6.1.8. Merchant shall, within 1 business day from the date on which the temporary notification of loss has taken effect, proceed with the formal notification of loss in a timely and effective manner in accordance with this Agreement and procure the formal notification of loss to take effect; otherwise, the temporary notification of loss made by Merchant shall automatically lapse within 1 business day from the date on which the temporary notification of loss has taken effect and the payment and settlement functions under the Merchant Account Number of Merchant shall resume normal operations. Merchant may also make a formal notification of loss to the Company directly.
- 6.1.9. For the purpose of submission of a formal notification of loss, Merchant shall properly fill in all information and affix a company seal of Merchant on a Notification of Loss in such form as set out in Appendix II hereof, and send a scanned copy of the duly completed Notification of Loss via the email account of Merchant to the Company (whose specified email address is admin@e-payments.co.nz) for the formal notification loss.
- 6.1.10. Upon receipt of the email for formal notification of loss from Merchant, the Company is entitled to, after verifying the identity information of Merchant which remain available, proceed with the procedures for formal notification of loss for Merchant. The formal notification of loss shall take effect upon the time at which the Company expressly notifies Merchant by email that "the formal notification of loss has taken effect". Merchant shall be liable for consequences of all operation under the Merchant Account Number of Merchant before the formal notification of loss has taken effect. The account payment function of the Merchant Account Number of Merchant will be suspended after the formal notification of loss has taken effect, but account receivables (if any) can still be remitted into such account.
- 6.2. Cancellation of the notification of loss of password, PIN and the Customer Certificate under the Merchant Account Number of Merchant.
- 6.2.1. If Merchant, after submitting a notification of loss (including both formal and temporary notification of loss reporting) to the Company but before the relevant notification has formally taken effect, applies for cancellation of notification of loss, it shall properly fill in all information and affix a company seal of Merchant on an Application for cancellation of notification of loss in such form as set out in Appendix III hereof, and send a scanned copy of the duly completed Application for cancellation of notification of loss via the email account of Merchant to ePayments.
- 6.2.2. Cancellation of notification of loss shall take effect upon the time at which the Company expressly notifies Merchant by email that "the cancellation of notification of loss has taken effect".
- 6.2.3. Upon the cancellation of notification of loss has taken effect, the payment and settlement functions under the Merchant Account Number of Merchant shall resume normal operations.
- 6.2.4. Merchant shall be liable for consequences of all operations under the Merchant Account Number of Merchant after the cancellation of notification of loss has taken effect.
- 6.2.5. Effective means for submission or cancellation of notification of loss. Upon notification of loss (both formal and temporary notification of loss) and cancellation of notification of loss, the Company and the Merchant shall communicate with each other by telephone. Merchant acknowledges that, in order to avoid any malicious notification of loss or cancellation of notification of loss, the Company is entitled to disregard any submission or cancellation of notification of loss not submitted through the contact method mentioned above.
- 6.2.6. System Security, the Company and the Merchant shall ensure the security of their respective computer systems and the related procedures, and undertake that their respective computer systems and the related procedures are free from "trapdoor", "logic bomb", "data theft", etc. that may threaten the system security of the other party.
- 7. RIGHTS AND OBLIGATIONS OF THE PARTIES**
- 7.1. Rights and obligations of Merchant
- 7.1.1. Merchant is responsible for the procurement, installation of Acquiring Device, to bear the resulting equipment cost and communication cost, and ensure the safety of Acquiring Device system. Merchant should specifically refer to technical details such as data transmission protocol, security mechanism, hardware requirement and physical connection etc. To make it convenient for Third Party Payment Providers Users to use the Third-Party Payment Providers Services, requirements of acquiring equipment installation include:
- 7.1.2. Acquiring Device position should be stable, safe and easy to operate;
- 7.1.3. Acquiring Device should avoid direct sunlight, high temperature, be damp or near a strong magnetic field;
- 7.1.4. Power supply, communication lines should be consistent with the Acquiring Device application;
- 7.1.5. Other conditions required for normal use of acquiring equipment.
- 7.1.6. If the installation conditions do not meet the above requirements, which result in Merchant not being able to accept Third Party Payment Provider Services, it will be Merchant's sole responsibility, and has nothing to do with ePayments.
- 7.1.7. Merchant shall use the Acquiring Device within the scope of the Agreement. Without ePayments' written consent, Merchant shall not to transfer, rent, lend, mortgage, pledge, lien or in any other way to dispose of the Acquiring Device. Merchant cannot transfer the Acquiring Device arbitrarily or move it to the other place of business or exchange between different cashier, otherwise, all losses incurred to Third Party Payment Providers' Users and the Company shall be borne by Merchant.
- 7.1.8. The Company shall request the Merchant to paste, display, hang and maintain "Third Party Payment Services" accepted identifying material in a prominent position of the Acquiring Device and place. Merchant shall not use Third Party Payment Providers' or "ePayments" name or the corresponding English name for any other usage.
- 7.1.9. Merchant shall use the Acquiring Device and the acquiring bank settlement account in accordance with this Agreement and shall not use the accepting terminal engaged in or assist others for any commercial fraud or other illegal activities.
- 7.1.10. Merchant shall not charge Third Party Payment Providers' Users for using Third Party Payment Provider Services or collect disguised additional fee, or reduce the service level, other than those additional fees permitted at law.
- 7.1.11. The Merchant guarantee the legal qualification or aptitude to fulfil this Agreement, shall

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- not use the Third-Party Payment Provider Services beyond Merchant's business scope respectively. Merchant shall provide its customer services telephone number to Third Party Payment Providers Users.
- 7.1.12. All information released and commercial activities conducted by the Merchant shall comply with the applicable laws and regulations, and requirements of the relevant government departments and administration of industry and commerce Merchant shall assume the corresponding liabilities arising therefrom.
- Merchant shall be solely responsible for complaints, return of goods, and disputes in relation to the products and services of the Merchant.
- 7.1.13. Without the written authorization of ePayments, Merchant cannot reproduce, copy, intercept, tamper the content on ePayments' website arbitrarily, or create derivative products which relate to the above contents.
- 7.1.14. When Merchant use the related services provided by the Company under this Agreement, Merchant shall ensure that the order processing, services providing procedures match the settlement process on ePayments' Third Party Payment Providers Services.
- 7.1.15. The Merchant shall ensure the truthfulness, accuracy and completeness of the information provided in purchase orders. Where loss is caused to the Company or Third-Party Payment Providers Users as a result of inter alia, untruthfulness, inaccuracy, incompleteness of Third-Party Payment Providers User's purchase orders or incorrect operation of Merchant, the Merchant shall assume liabilities accordingly. Meanwhile, the Merchant shall assist the Company in handling properly in relation to Third Party Payment Providers Users' complaints on payment service and co-operate to implement suggestions put forward by ePayments. The Merchant shall keep properly the relevant transaction data and receipts for at least five years from the date of transaction. For notice of enquiry and request for checking receipts by ePayments, Merchant shall upon receipt of notice from ePayments, reply to the Company by sending the relevant original receipts within five business days by mail or by facsimile
- 7.1.16. The Merchant shall not assist Third Party Payment Providers Users in engaging in any illegal activity, inter alia, cash advance, money-laundering by Third Party Payment Providers, or breaking the transaction into several purchases. No acts involved in serious risks, inter alia, false application, skimming, malicious closure are allowed. Otherwise, the Company shall have the right to submit the information of Merchant to the relevant regulatory authorities. The Merchant shall ensure that any Transaction initiated through Third Party Payment Services is made in a real scenario. The Merchant shall provide sufficient evidence to prove the existence of the trading relationship between the Third-Party Payment Providers' User and the Merchant.
- 7.1.17. Merchant agrees they shall actively take precautions against chargeback of credit to Third Party Payment Providers' Users, and promptly resolve all issues relating to customer service. The Merchant shall solve on its own the disputes, such as claims, arising from such circumstances. If the Merchant delays in resolving these disputes, the Company shall have the right at its own discretion to debit directly an amount equivalent to the loss from the settlement payment payable to Merchant. Where the settlement payment of Merchant is insufficient to cover the amount of loss, the Company shall have the right to claim the shortfall from Merchant.
- 7.1.18. Without the written authorization of ePayments, Merchant shall not reveal, transfer, paid or unpaid for any third party's usage of interface technology, security protocols and certificates. At the same time, Merchant shall not use the resources dedicated to Third Party Payment Provider Platform acceptance for other purposes beyond the Agreement, nor shall transfer to any third party, nor counterfeit transaction by the other merchants and make settlement with ePayments.
- 7.1.19. The Merchant is entitled to collect and use Third Party Payment Providers Users' information in accordance with the Merchant's privacy policies
- 7.1.20. The Merchant shall not employ any reverse engineering method to decipher all systems and procedures including but without limitation to software systems and procedures of ePayments, and shall not copy, amend, edit, consolidate and alter the systems and procedures abovementioned (including but without limitation to source program, object program, software files, data processing in local computer storage devices, data from terminals of clients to servers, server data, etc.) and shall not amend the original functions of or add further functions to the software system of The Third Party Payment Provider provided by ePayments.
- 7.1.21. In case of relocation, suspension of business, change of domain name, telephone number and other merchant information of the Merchant, Merchant should inform the Company in advance. The Company has the right to suspend services according to specific circumstance. If Merchant fails to notify resulting in the loss of ePayments, the Merchant shall bear the responsibility.
- 7.1.22. In the occurrence of the following circumstances, Merchant agrees and authorizes the Company full rights to deduct the compensation amount equal to ePayments' loss directly from The Third-Party Payment Providers' account under Merchant's Merchant ID, Merchant shall have no objection if:
- 7.1.23. Merchant does not pay the Third-Party Payment Providers Services fee to the Company in accordance with this Agreement;
- 7.1.24. Merchant violates clauses under this Agreement which causes loss to ePayments.
- 7.1.25. Merchant violates clauses under this Agreement which causes loss to ePayments.
- 7.1.26. Rights and obligations of ePayments
- The Company shall be responsible for the establishment, operation and management of the Third-Party Payment Provider Platform. Details of the administrative rules and functions of Third-Party Payment Provider Platform are set out on the website of ePayments. The Company may formulate or amend those administrative rules and functions if necessary and announce the same on its website. If Merchant disagrees to those changes made by ePayments, it shall forthwith notify the Company in writing and cease to use the relevant service provided by ePayments, and the parties shall proceed with the relevant formalities to discharge the Agreement. If Merchant continues to use the relevant service provided by ePayments, Merchant shall be deemed to have confirmed and undertaken to comply with the administrative rules and functions formulated or amended by ePayments.
- 7.1.27. When this Agreement takes effect, according to Merchant's application, the Company will open Customer Certificate services for Merchant.
- 7.1.28. Merchant understands and agrees that the Company only provides cross-border offline and online payment services for Merchant, the Company is solely responsible for complaints and disputes related to ePayments' Third Party Payment Provider Platform and settlement System. It is the Merchant's responsibility to solve the complaints and disputes between Merchant, Third Party Payment Providers' Users and any third party in relation to products and services of the Merchant.
- 7.1.29. The Company shall have a telephone number for business enquiry and contact to answer questions encountered by Merchant when using the payment platform of ePayments. The Company shall promptly deal with any relevant issues in the course of account reconciliation and fund settlement of the Parties.
- 7.1.30. The Company shall provide Merchant with the required information and guidance relating to interface technology, files, etc. necessary for the performance of the Agreement. The Company shall be responsible for the system's operation and maintenance, such as payment system upgrade, the Company shall provide free upgrade service to Merchant promptly.
- 7.1.31. If the Merchant fail to promptly notify the Company of any termination of its business or contact method and the Company receives no response from the Merchant within 3 business days after contacting the Merchant, the Company may upon request for refund from the Third Party Payment Providers' User directly refund to the account of the Third Party Payment Providers' User the payments already made by the Third Party Payment Providers' User but not yet settled with Merchant.
- 7.1.32. All information published and commercial activities by the Company must be in strict compliance with the current laws and regulations, and current requirements of the relevant government departments and administration of industry and commerce. The Company shall assume the corresponding liabilities arising therefrom.
- 7.1.33. The Company has the right to audit the Merchant's business in relation to the transactions involving the Company only, periodically.
- In case of any change of information or business of the Merchant, Merchant shall promptly notify ePayments. The Company shall be entitled to immediately terminate the Agreement in its absolute discretion without any liability to Merchant if the Company reasonably believes Merchant can no longer satisfy its obligations under the Agreement or comply with the applicable laws and regulations, and requirements of the relevant government departments and administration of industry and commerce because of the change. If Merchant fails to use the System for any Transaction for 90 consecutive days, the Company shall be entitled to terminate the System and this Agreement without any liability.
- 7.1.34. The Company shall be entitled to terminate this Agreement or to suspend, interrupt or terminate the System by giving 10 business day's written notice to the Merchant without incurring any liability to the Merchant or any other person the Company has the right to conduct operations according to Merchant's issued instructions, all disputes and legal liability resulting shall be borne by Merchant solely.
8. REFUNDS
- 8.1. When the Merchant makes a refund request to ePayments, ePayments shall debit directly an amount of refund from the funds not settled with the Merchant in order to effect the refund.
- 8.2. In the event that the amount of funds not settled with the Merchant is insufficient to effect the refund, the Merchant shall make the refund request to ePayments again until the amount of funds not settled is sufficient, or will provide ePayments with sufficient funds to effect the refund.
- 8.3. Any dispute arising from the failure to promptly refund and the corresponding liabilities shall be borne solely by the Merchant.
- 8.4. ePayments shall not further impose any Merchant Services Fee for any refund. Refund period shall be ninety (90) calendar days.
9. INTELLECTUAL PROPERTY
- 9.1. The Company has the rights to utilize the Third-Party Payment Providers Platform and related system, procedures, products and services. Such products and services of the Third Party Payment Providers Platform include all contents of text, software, voice, pictures, visual images, charts and advertisements, and all contents of emails of Third Party Payment Providers Platform and other information provided for Third Party Payment Providers Users on ePayments' website, which are all protected by law. The use of the abovementioned rights by the Merchant shall be subject to written permission of ePayments.
- 9.2. The preceding two provisions shall survive upon termination of the Agreement.
- 9.3. CONFIDENTIALITY OBLIGATIONS
10. Without the other party's prior written consent, neither party can disclose the contents of the Agreement, customers' personal information, customers' payment information, interface technology, security protocol and certificate and such other things provided without written consent to any third party.

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- 10.2. The Parties shall have confidentiality obligation regarding commercial secrets such as technology and operation of the other Party obtained in the performance of the Agreement. Either party receiving the Confidential Information shall take measures to protect such Confidential Information to prevent the commercial secrets from using, disseminating or making public without authorization.
- 10.3. The Parties shall ensure that their employees and agents perform the confidentiality obligations hereunder.
- 10.4. The abovementioned confidentiality obligations shall not lapse upon termination of the Agreement.
- 11. PAYMENTS AND DISCOUNTS**
- 11.1. Subject to the other provisions of this Agreement, the Company shall pay the Merchant the Transaction amount (less the Merchant Services Fee) for each Transaction accepted by the Company in accordance with clause 11.2
- 11.2. Payment by the Company to the Merchant may be made by direct credit to Merchants' designated bank account, through BNZ Bank, or other agreed solution in writing. All the related banking charges incurred by the Company in effecting the payment will be borne by the Merchant, which is specified in the Merchant Facilities Agreement.
- 11.3. Payment by the Company shall be without prejudice to any claim or right which the Company may have against the Merchant and shall not constitute any admission or waiver by the Company as to the performance by the Merchant of its obligations under this Agreement or the amount payable to the Merchant, nor shall it in any manner prejudice ePayments' rights interest and benefits pursuant to this Agreement or otherwise.
- 11.4. At any time and from time to time the Company shall be entitled to set off against and deduct from the Merchant's designated bank Account and/or any account which the Merchant held with the Company or any payment due to the Merchant with:
- 11.4.1. Any overpayment made by the Company to the Merchant owing to whatever reason;
- 11.4.2. Any other sum due from or payable by the Merchant to the Company pursuant to this Agreement or otherwise;
- 11.4.3. Any amount which the Company was not obliged to pay;
- 11.4.4. Any cancellation of the Third-Party Payment Providers' Transaction that is initiated by any Third Party Payment Providers' User; and
- 11.4.5. Any amount to be reimbursed to the Company by the Merchant for whatever reason.
- 11.5. In addition and without prejudice to any other right and remedy available to ePayments, the Company shall have the absolute right at any time without notice to refuse payment of any Transaction presented to the Company by the Merchant or, if payment has been made, to be reimbursed by the Merchant immediately with the amount paid on such Transaction if the Company notifies the Merchant of the occurrence of any of the following:
- 11.5.1. Dishonesty or fraud by the Merchant or its officers or employees is suspected, on reasonable grounds, in relation to such Transaction;
- 11.5.2. Any aspect of the relevant Transaction was made or conducted in breach or contravention of any of the provisions in this Agreement;
- 11.5.3. The Third Party Payment Providers User denies liability (in whole or in part) for the Transaction and after investigation of the Transaction by ePayments, and any other detail setting out the circumstances surrounding the transaction, the Third Party Payment Providers User's claim is accepted by the Company as valid; or
- 11.5.4. It is illegal for the Company to allow payment for the Transaction provided that the Company has notified the Merchant as soon as practicable that any such transaction as the Transaction is illegal for the Company to process.
- 11.6. The Merchant Services Fee specified in the Merchant Facilities Agreement may be varied with immediate effect from time to time by the Company upon giving 7 days written notice to the Merchant subject to clause 21 herein.
- 11.7. All payments by the Company in respect of a Transaction shall be made in NZD.
- 12. TERMS AND CONDITIONS OF DEPOSIT**
- 12.1. ePayments has the right to collect a deposit from the Merchant. At the time of signing this Agreement ePayments does not require a deposit from the Merchant.
- 12.2. ePayments is entitled to adjust the deposit amount mentioned above in writing (including but not limited to email, fax, etc.) according to the change of business and default of the Merchant. Any request for a deposit or increase in a deposit will be discussed with the Merchant prior to any request being made.
- 12.3. However, ePayments reserves the right to request a deposit and if the Merchant fails to top up the deposit within five (5) business days upon receipt of the notice, ePayments is entitled to suspend the provision of service; If the Merchant fails to top up the deposit within thirty (30) calendar days upon receipt of the notice, ePayments is entitled to terminate the Agreement without any liability.
- 12.4. If the Merchant does not breach the Agreement and no complaint or transaction dispute is lodged by a third party against the Merchant within one (1) year after the Merchant has ceased to use the service provided under the Agreement, ePayments shall refund the deposit to the Merchant upon expiry of the period mentioned above.
- 12.5. During the term of this Agreement, due to the Merchant's violation of the state laws, regulations, policies, decrees or violation of its commitment to users or breach of the Agreement which causes losses to users or ePayments, the Merchant agrees that ePayments has the full power according to ePayments own judgement, ePayments has the right to deduct the amount of loss directly from the deposit of the Merchant's payable account as compensation to users and ePayments. If the deposit is not enough to compensate, ePayments may continue to pursue recovery. After end of cooperative
- relation, ePayments still enjoy the right of loss recovery from the Merchant.
- 12.6. Clauses related to security, payment and loss compensation are still effective after the termination or alteration of the Agreement.
- 13. REMOVAL AND CESSATION OF BUSINESS**
- The Merchant shall inform the Company in writing of any change of its registered address/office and/or business outlet and its cessation/suspension of business not less than thirty days prior to the relevant effective date.
- 14. DISCLOSURE**
- The Merchant hereby acknowledges and agrees that to the extent permitted by law, the Company shall have a right to obtain from and exchange information about the Merchant with any person, including without limitation, Third Party Payment Providers, banks and other financial institutions, credit reference agencies, any agent, contractor, or debt collection agency for the purposes of assessing applications received from the Merchant, and for no other purpose.
- 15. EXCLUSION OF LIABILITY**
- 15.1. The Merchant acknowledges that its entry into this Agreement is not based or otherwise in reliance on any representation, statement or warranty in whatever form made by or on behalf of the Company (which, if made, shall all be hereby deemed as withdrawn and revoked) other than those set out in this Agreement and the Annexures attached hereto.
- 15.2. The Company shall not be under any liability whatsoever to the Merchant, its customers and any other person for the inaccuracy, invalidity or improper exercise of any authorization communicated by the Company in connection with this Agreement unless caused by any fraud, breach, negligence or wilful default on the part of the Company or its officers/agents.
- 15.3. The Company shall not be under any liability whatsoever to the Merchant for any loss, damage, liabilities, demands, claims, costs and expenses which the Merchant may suffer or incur by reason of, or which may arise directly or indirectly from, anything relating to irregular Transaction or the failure of the Facilities or the System except caused by any fraud, breach, negligence and wilful default on the part of the Company or its authorized officers/agents.
- 16. INDEMNITY**
- The Merchant shall indemnify the Company on demand in respect of all claims, costs (including legal costs on a full indemnity basis), expenses, damages, demands, losses and liabilities made against, suffered or incurred by the Company arising directly or indirectly from or in connection with any of the following:
- 16.1. The Merchant's failure to perform or comply with any of its obligations or duties under this Agreement or otherwise in law or equity;
- 16.2. Any claim, demand, denial of liability (in whole or in part) or dispute by the Third Party Payment Providers User, the third Party Payment Provider or their Affiliate concerning any aspect of a Transaction unless caused by any fraud, breach, negligence or wilful default on the part of the Company or its officers/agents;
- 16.3. Any charges, fees or expenses imposed, levied or assessed by the Third-Party Payment Provider on the Company from time to time as a result of any act, conduct or omission of the Merchant;
- 16.4. Any misuse or mishandling of the Facilities; and
- 16.5. The remittance of GST deemed to be payable on any goods or services provided to the merchant by the Company under this agreement, provided that the Company has first rendered a tax invoice in compliance with the GST Act.
- 17. CONFIDENTIALITY AND DISPUTE RESOLUTION**
- 17.1. The Merchant shall not (unless under legal compulsion to do so) disclose any information or document in relation to or obtained from any of the Third Party Payment Providers User by reason of the Merchants in any way to any person without the written consent of the Company or related Third Party Payment Providers User.
- 17.2. If any question, difference or dispute whatsoever arises between the parties hereto, then the parties will attempt to resolve such dispute through commercial negotiation in good faith. If they are then unable to resolve such dispute, then any such party may by notice in writing to the other party specify the nature of such question, difference or dispute and call for the matter to be referred to mediation.
- 17.3. The parties may agree upon the appointment of a single mediator. If the parties fail to agree on the appointment within seven days, either party may apply to Financial Dispute Resolution to nominate a mediator.
- 17.4. The mediator may fix reasonable charges for the mediation which must be paid equally by the parties.
- 17.5. If the parties are unable to resolve a dispute through mediation, then the dispute must be referred by the parties to arbitration for resolution. The arbitration will be conducted by an arbitrator appointed by agreement between the parties or, failing such agreement, by the President of the Arbitrators' and Mediators' Institute of New Zealand. The rules of arbitration and the costs to be paid by each party will be determined at the discretion of the arbitrator.
- 17.6. Nothing in clauses 17.2 to 17.5 inclusive herein will be read to prevent the right of either parties to seek injunctive relief against the other for enforcement of its rights under this Agreement.
- 18. TERMINATION**
- 18.1. The Parties shall be entitled to terminate this agreement upon written notice of no less than 30 days subject always to this clause. Such termination shall not discharge,

## ePayments Limited Merchant Facilities Terms and Conditions

- prejudice or otherwise affect the Merchant's accrued obligations and liabilities under this Agreement in respect of the Transactions completed before the effective date of such termination.
- 18.2. Upon termination of this Agreement, the Merchant shall immediately at the Merchant's expense return to the Company all equipment, documents, and items supplied to the Merchant including, without limitation, the whole of the Facilities.
- 18.3. Any Transaction presented to the Company from and including the effective date of such termination will not be paid by ePayments.
- 18.4. This is a ONE YEAR agreement from the date of this Merchant Facilities Agreement, unless otherwise specified,
- 18.5. Where a party enters into any form of insolvent administration, or its assets become the subject of execution repossession attachment or foreclosure, or ceases to trade substantially, or undergoes a change in ownership or control, or is unable to comply with its obligations under this Agreement, or has served the requisite notice of termination under this Agreement, then this Agreement shall terminate automatically.
19. **ASSIGNMENT**
- 19.1. The Merchant is not entitled to assign or transfer any of its rights and obligations under this Agreement
- 19.2. The Company is entitled at any time to assign or transfer any or all of its rights and obligations under this Agreement in favour of any subsidiary, related or associated company of the Company or any company within the group of ePayments' holding company and to subcontract or appoint any agent or third party service provider to perform or carry out any of ePayments' services or obligations under this Agreement.
20. **WAIVER**
- Any failure, forbearance or delay by the Company in exercising any right or remedy shall not be deemed to be a waiver of such right or remedy, and any single or partial exercise of any right or remedy shall not preclude further exercise thereof. No course of dealing between the Merchant and the Company nor any waiver in any one or more instances shall be deemed a waiver in any other instance. The Company's rights and remedies shall continue in full force and effect until they are specifically amended or waived in writing by ePayments.
21. **GENERAL**
- 21.1. If signed by a firm, the expression "the Merchant" shall include the persons from time to time carrying on the business of such a firm and, if there are two or more such persons, the expression "the Merchant" shall include each and all of them and their liabilities under this Agreement shall be joint and several.
- 21.2. If any provision of this Agreement is or proves to be or becomes illegal, invalid or unenforceable, in whole or in part, such provision or part shall to that extent be deemed severed and deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not in any way be affected thereby.
- 21.3. Any notice or communication by either party to the other shall be in writing and shall be deemed to have been duly given if either delivered personally or by post addressed to the other party at its last known address or by facsimile transmission at the number communicated by one party to the other with confirmed facsimile report. The notice shall be deemed to have been duly served in case of delivery, on the date of delivery, in case of sending by post, on the third day following the date on which the notice is posted and in case of sending by facsimile, on transmission of the facsimile.
- 21.4. The Company shall be entitled to vary or amend any of these provisions and/or to introduce new provisions to this Agreement from time to time at its sole discretion. Any such variation, amendment or introduction will become effective and binding on the Merchant upon 7 days notification to the Merchant. If the Merchant is unwilling to accept any such variation, amendment or introduction, then the Merchant shall notify the Company in writing within seven days from the date of receipt of the notification by the Company and propose some alternative which is acceptable to it. If the Company does not within a further 7 days accept the proposed alternative and the parties are unable to agree on some compromise, then the Merchant will be entitled to terminate this Agreement in accordance with clause 18.
- 21.5. For all intents and purposes, including any legal proceedings, a certificate issued by an authorized signatory of the Company as to the sums and liabilities for the time being due by (or incurred to ePayments) by the Merchant shall, in the absence of manifest error or fraud or negligence of ePayments, be conclusive evidence thereof against the Merchant.
- 21.6. The Company may at the time of and at any time after signing of this Agreement assign one or more Merchant Account Number(s) to the Merchant for administrative purposes. The Merchant agrees that the Company may at any time (whether or not at the request of the Merchant) cancel, consolidate and/or re-designate the then existing Merchant Account Number(s) and to assign new Merchant Account Number(s) to the Merchant in whatever manner or combination as it sees fit.
- 21.7. This Agreement shall be construed and enforced in accordance with the laws of the New Zealand.
- 21.8. Where the Merchant consists of two persons or more, all the provisions contained herein are and shall be deemed to have been agreed to by such persons jointly and severally.
- 21.9. Without prejudice to any accrued rights or remedies of the parties hereto prior to the date of this Agreement, for all intents and purposes, the provisions of this Agreement and any Annexures shall supersede all previous agreements, arrangements and understandings whatsoever between the Company and the Merchant (if any) with regard to the transactions hereby contemplated upon signing of this Agreement. For the avoidance of doubt, all obligations of the parties hereto which remain outstanding as at the date hereof (if any) shall be performed and discharged in accordance with the provisions hereof.
- 21.10. The Merchant consents to ePayments sending the Merchant Agreement, all other agreements, settlement reports, monthly invoices, and confirmation of direct debit and credits to me/us in electronic format to the provided contact email address.
- 21.11. The Merchant agrees to take adequate measures and precaution as emails are transmitted over the Internet which is an unsecure public domain and subject to risk including interception, corruption, non-delivery and mis-delivery.
22. **Acknowledgement**
- This "Know Your Corporate Client" (KYCC) validation is required to be carried out by ePayments in accordance with "Know Your Customer" guidelines under Anti-Money Laundering and Counter Financing of Terrorism Act 2009. The Merchant hereby acknowledges and agrees that any information provided with this "Merchant Application and Agreement may be supplied by ePayments to its affiliates and Issuing Participants. All information received will be stored securely and be kept confidential. However, ePayments may at any time give the company information to any of its payment providers or Regulatory Authorities where required by any law. The Merchant further agrees to submit on behalf of the Merchant, principal(s) and officers information including their personal information as disclosed in this Merchant Application and Agreement. All the personal data as obtained have explicit consent for all uses and processing by ePayments and its affiliates.
- The merchant acknowledges that it has been given a copy of ePayments' Merchant Agreement Terms and Conditions and has read and understands their contents.