



Tri-Party Merchant Agreement



Company # 3834196

MERCHANT AGREEMENT FOR PROCESSING CARD PAYMENTS THROUGH INTEGRAPAY

This agreement applies to all users of the IntegraPay payment service who have been approved to accept Visa and MasterCard transactions. This agreement is made between (1) you, the merchant; (2) Bank of New Zealand (**BNZ**); and (3) us – IntegraPay.

1. INTERPRETATION

1.1 The following words have these meanings in this agreement unless the contrary intention appears:

agreement means all the documents referred to in 3.1.

approved foreign currency means a foreign currency which is designated by us from time to time as an approved foreign currency.

attempted authenticated transaction means a card transaction which you tried to authenticate using the authentication procedures but were unable to do so because at the time you tried, either:

the card issuer was not registered with the card schemes to participate in the authentication procedures;

the cardholder was not registered with the issuer to participate in the authentication procedures; or

the card issuer chose to bypass authentication.

authenticated transaction means a card transaction that has been authenticated using the authentication procedures.

authentication means the process whereby the identity of a cardholder is authenticated using the authentication procedures associated with the 3D Secure protocol; branded as Verified by Visa and MasterCard SecureCode. **'Authenticate'**, **'authenticated'** and **'authenticating'** have similar meanings.

authentication procedures means the procedures and requirements identified by us as being those to be followed and satisfied (respectively) when authenticating the identity of a cardholder who wishes to use their card to purchase goods or services from you over the internet.

authentication request means a request to authenticate a proposed sales transaction using the authentication procedures.

authorisation means, in respect of a transaction, our confirmation that, at the time at which confirmation is given the card number exists and is valid, the card has not been reported lost or stolen or blocked for use, and that funds will be made available to cover that transaction.

banking day means a day on which we are open for general banking business in Wellington and Auckland, New Zealand, except for Saturdays, Sundays and national public holidays.

BNZ refers to the Bank of New Zealand.

BNZ Services means the merchant acquiring services provided by BNZ to us for the acceptance and processing of transactions.

bureau means a third party used by you to transmit information between you and us on your behalf.

card means a credit card, debit card or pre-paid card (as applicable) issued by a card scheme member.

card schemes means Visa, MasterCard, China UnionPay, the domestic debit scheme or any other card scheme with whose card scheme rules we are obliged to comply.

card scheme rules means the rules and regulations which regulate participants in the card schemes.

cardholder means:

- (a) for the purposes of 5.6 to 5.10 (both inclusive) and any other clauses relating to the authentication procedures, the person in whose name the card (as defined for the same purposes) has been issued; and otherwise, the person in whose name a card has been issued.

cardholder data means any information, document or an account number relating to a cardholder, a cardholder's nominated card number or a transaction.

chargeback means the reversal of a card sales transaction to you.

chip card means a nominated card containing a computer chip that adheres to chip security standards.

chip security standards means the security standards mandated from time to time by card schemes.

commercial card means a card which the card schemes recognise as being issued for predominantly business or commercial purposes.

confidential information means all information and material we disclose to you (whether orally, in writing or in any other form) that we designate as confidential or impart to you in circumstances of confidence, under or in connection with this agreement. Confidential information includes any information relating to our business systems, operations, customers, properties, assets or affairs of us or those of our related companies. It also includes all copies, notes, analysis and records and all related information based on, or arising out of, any disclosure by us of such information or material.

Confidential information does not include information or material that is:

- (a) in the public domain (other than as a result of breach of this agreement); or
- (b) independently developed, discovered or known by you.

CurrencySelect means the service through which we enable merchants to transact electronic commerce transactions and MOTO transactions in approved foreign currencies.

CVC2 means the card verification code for MasterCard (3 digit code printed on the signature panel of the card).

CVV2 means the card verification value for Visa (3 digit code printed on the signature panel of the card).

data breach means any occurrence which results in the unauthorised access by any person to confidential data relating to card transactions stored by your business.

data security standards means the data security standards mandated by the card schemes for the protection of cardholder data or any other cardholder details and transaction information, and of which we advise you from time to time.

directory server means a computer server which is used by a card scheme to route an authentication request from you to a card issuer.

domestic debit scheme means the interbank proprietary debit scheme governed by the Payments NZ Limited Consumer Electronic Clearing System Rules and Standards.

electronic commerce transaction means a transaction between you and a cardholder over the internet and other networks using a terminal, personal computer or other device to initiate such a transaction.

EOV means 'electronic offline vouchers' which is a process in which details of a transaction are read and stored by equipment but are processed later than would be the case if the equipment were functioning normally and regardless of whether this occurs accidentally or because of a deliberate act or omission.

equipment means any equipment and software, designed to be used to transmit, record and/or process information about transactions.

failed authentication transaction means a card transaction which could not be authenticated using the authentication procedures because the cardholder used an incorrect PIN and/or Password.

GST means a goods and services tax or any similar tax imposed in New Zealand.

intellectual property rights means all rights, titles and interests wherever subsisting throughout the world and whether registered or not in and to:

- (a) copyright, author's rights, neighbouring rights, sui generis protection for the contents of databases, the protection of circuit layouts and rights of topography, designs;
- (b) inventions, patents, utility models;
- (c) trade secrets, know how, confidential information;
- (d) trademarks, business names, trading styles and get up; and
- (e) any right contemplated by a treaty, convention or instrument administered by or under the auspices of the World Intellectual Property Organisation, and includes the right to apply for the registration, grant or other insurance of such rights, titles and interests.

manual transaction means a transaction, details of which are recorded on a voucher.

materials means any writing, drawing, sculpture, model, photographic product, computer program, table, compilation, literary work, artistic work, sound recording, cinematographic film, two or three dimensional representation or any electronic, magnetic, electromagnetic or optical form of storage from which sounds or information may be reproduced.

merchant services means the ability for you to accept nominated cards to facilitate payment for your merchandise and/or services.

merchant software means the software which either we or the card schemes have told you is required if you wish to participate in the authentication procedures.

MOTO transaction means a card transaction involving an order for goods or services received by you by mail, facsimile, telephone or email.

nominated account means the account referred to in 10.3 or 10.4 (as applicable).

nominated card means a type of card referred to in this agreement which can be authorised and settled by us through BNZ.

non-authenticated transaction means a card transaction that has not been authenticated.

non-standard card means a type of card which is not a nominated card.

notice means a notice, request, consent and any other communication in connection with this agreement.

Payments NZ means Payments NZ Limited.

personal information means information about an identifiable individual.

PIN means the personal identification number allocated by a card issuer or personally selected by a cardholder.

point of sale transaction is a transaction where the card, cardholder, and you are all physically present at the time of the transaction.

pre-authorisation means that a transaction that is to be processed at a later time has been authorised up to the value of the proposed transaction.

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.

receipt means a document used to evidence a transaction.

recurring transaction means multiple transactions processed at predetermined intervals, not to exceed one year between transactions, representing an agreement between a cardholder and a merchant to purchase goods or services over a period of time.

related company has the meaning given to it in the Companies Act 1993.

relevant law means any:

- (a) statute, ordinance, code or other law including regulations and other instruments under them;
- (b) any code of practice, guidelines or standards issued by relevant regulators or industry bodies, whether or not having the force of law; and
- (c) any card scheme rules applicable to confidential information, the provision of the merchant services and any other obligations to be performed under this agreement.

remote transaction is a transaction where any of the card, cardholder, or you are not physically present together at the time of the transaction and includes electronic commerce transactions and MOTO transactions.

Secure Sockets Layer means the method of encryption known in the information technology industry as "Secure Sockets Layer" and used to keep a website page, and the transmission of data to and from it, secure.

surcharge fee means a fee applied to a transaction by you for the acceptance of card payments that is not applied to transactions paid for by other payment mechanisms.

Switch Provider means Paymark Limited and/or such other switch provider as we may, from time to time, have a contractual relationship with.

transaction includes a sales transaction, refund transaction and cash transaction, whether remote transactions or point of sale transactions.

unavailable for authentication transaction means a card transaction which you have tried to authenticate using the authentication procedures, but were unable to do so because at the time you tried:

- a) the directory server, your computer systems, our computer systems, our or BNZ's payments processing agent's or contractor's computer systems or a combination of any of them was unavailable; or
- b) you sent us an authentication request for a transaction involving a card that is excluded from participation, for example anonymous non-reloadable gift cards and visa commercial cards issued in the United States of America; or
- c) the issuer was registered with the card schemes to participate in the authentication procedures but:
 - i. the computer system of the issuer was unavailable; or
 - ii. the issuer could not process the authentication request.

UnionPay means the card scheme known as China UnionPay.

UnionPay card means a card that is branded as a UnionPay card (being any card solely displaying a UnionPay logo, but not if it also displays a Visa or MasterCard logo as the card is then processed as a Visa or MasterCard transaction).

we, our and **us** refer to [Merchant Acquiring Agent name], the provider of merchant services to you.

you and **your** means the person to whom the merchant service is provided by us.

- 1.2 In this agreement unless the contrary intention appears:
- (a) a reference to this agreement, another document or any schedule or annexure includes any variation or replacement of any of them;
 - (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (c) the singular includes the plural and vice versa;
 - (d) the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency or authority;
 - (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assignees;
 - (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
 - (g) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
 - (h) a reference to a day is to be interpreted as the period of time commencing at midnight and ending twenty four (24) hours later;
 - (i) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
 - (j) a reference to a "dollar" or the symbol "\$" is a reference to New Zealand dollars;
 - (k) the verb "include" (in all its parts, tenses and variants) is not used as, nor is it to be interpreted as, a word of limitation; and
 - (l) the words "including", "for example" or "such as" do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
- 1.3 Headings are inserted for convenience and do not affect the interpretation of this agreement.
- 1.4 If there is any inconsistency between this agreement and the card scheme rules, the card scheme rules will apply.

2. APPROVAL TO USE PAYMENT SERVICES

- 2.1 You acknowledge that:
- (a) the operation of this agreement is conditional on BNZ approving an application from us for us to provide the merchant services to you;
 - (b) in relation to information provided by you to us in connection with your application:
 - (i) we may provide that information to BNZ;
 - (ii) BNZ may rely on such information as being complete, accurate and not misleading or deceptive; and
 - (i) BNZ is not obliged to verify the completeness or accuracy of the information it receives from us;
 - (c) BNZ 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 company, your owners/shareholders, officers, employees or agents for any purpose relating to the operation of those card schemes and BNZ can use any such information to assess an application from us under clause 2.1(a);
 - (d) BNZ can disclose information about your merchant history and relevant personal information in the following circumstances:
 - (ii) 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 schemes, card fraud detection agencies (including information about termination of merchant services and reason(s) for termination of BNZ Services); and
 - (iii) where the law requires or permits BNZ to do so;
 - (e) the decision whether to approve an application from us under clause 2.1(a) is at BNZ's sole discretion and the reason for any decision which is made will not be given to you;
 - (f) an approval by BNZ is specific to us providing merchant services to you and does not in any way constitute a representation by BNZ that you will be able to use the services of another merchant acquiring agent or of BNZ directly should you cease using our merchant services for any reason; and
 - (g) any information obtained by BNZ during its assessment of an application under clause 2.1(a) is and remains confidential to BNZ and will not be shared with you. BNZ is bound by card scheme rules and all correspondence and discussions between card schemes and BNZ are confidential as between BNZ and the card schemes.
- 2.2 You represent and warrant that:
- (a) any information you provide to us in connection with an application for us to provide the merchant services is complete, accurate and not misleading or deceptive;
 - (b) if you have disclosed personal information to us in connection with the application under clause 2.1(a), you have obtained the relevant individual's prior consent to the disclosure and otherwise complied with your obligations under privacy law; and
 - (c) you are able to satisfy your obligations and responsibilities under this agreement.

- 2.3 You acknowledge and agree that:
- (a) 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
 - (b) any information collected may be disclosed by us to BNZ.
- 2.4 This agreement will not bind either you or us unless and until BNZ has confirmed its approval for us to provide the merchant services to you.

3. YOUR OBLIGATIONS

General obligations

- 3.1 You must comply with all the requirements and pay any fees which apply to you in:
- (a) these general terms and conditions;
 - (b) any merchant service guide, card fraud prevention guide, lease agreement for equipment, manual or instructions either provided by us to you for the purposes of this agreement, or provided by another supplier of equipment, whether specifically mentioned in this agreement or not;
 - (c) any existing or future agreement you have with us, the Switch Provider or Payments NZ; and
 - (d) the terms and conditions relating to any specific merchant services, in addition to those covered by these general terms and conditions, whether or not they are contained in a schedule.

The requirements in these general terms and conditions apply to point of sale transactions and remote transactions. To the extent that you are not receiving processing services in relation to either point of sale transactions or remote transactions from us, the requirements in these general terms and conditions that relate only to point of sale transactions or remote transactions (as applicable) will not apply. For the avoidance of doubt, if there is any dispute between you and us regarding whether a requirement is applicable, BNZ may determine, acting reasonable, in its sole discretion, the requirements that are applicable to point of sale transactions or remote transactions.

- 3.2 To the extent of any inconsistency between the documents referred to in 3.1, the following rules shall apply:
- (a) the terms and conditions for specific merchant services prevail over these general terms and conditions; and
 - (b) these general terms and conditions prevail over the remaining documents.
- 3.3 You must:
- (a) immediately notify us of any change to your financial position which may affect your ability to perform your obligations under this agreement;
 - (b) 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, which consent will not be unreasonably withheld;
 - (c) not change your business name, ownership of your business or substantially change the type of goods and services you sell, without our prior written consent, which consent will not be unreasonably withheld;
 - (d) if you wish to change your:
 - internet address;
 - e-mail address;
 - telephone or fax number; or
 - website name,you must advise us in writing at least ten (10) banking days prior to the change taking effect;
 - (e) only process transactions where you are the seller and supplier of goods and/or services;
 - (f) not process transactions on behalf of a third party. For the avoidance of doubt, this includes not processing payments for goods or services sold on another person's website;
 - (g) allow our employees, contractors, sub-contractors or agents or those of BNZ or any nominated card scheme operator to enter your premises as reasonable during normal business hours to check your compliance with this agreement or for the purposes of the relevant card scheme rules;
 - (h) provide us with all information and assistance we reasonably require to perform our obligations and to deal with any queries in relation to our provision of the merchant services;
 - (i) comply with all relevant laws and contractual requirements in:
 - (i) carrying on your business,
 - (ii) entering into transactions, and
 - (iii) performing your obligations under this agreement; and
 - (j) not do anything by your act or omission that would cause us to breach any law or relevant card scheme rules.
 - (k) must observe and implement the fraud prevention procedures set out in the manuals, guides or directions provided to you.

From time to time we may require you to provide us with written opinions from independent, reputable, and qualified legal counsel confirming that your activities comply fully with all relevant laws.

- 3.4 You acknowledge and agree that the card scheme has the right to enforce any provision of the card scheme rules against you and to prohibit any conduct that may harm the card scheme. You agree that you will not take any action that could interfere with the exercise of this right.

UnionPay card terms and conditions

- 3.5 For the purposes of 3.2, the terms and conditions of 3.5 are deemed to be terms and conditions for specific merchant services. You acknowledge and agree that in respect of UnionPay card transactions the following must apply:
- (a) they may only be processed when the UnionPay card and the UnionPay cardholder are both present at the time you process the transaction;
 - (b) they must be point of sale transactions where the UnionPay cardholder's card is swiped or inserted and may only be processed and authorised using EFTPOS (electronic funds transfer at point of sale) terminals certified by us or the Switch Provider to process UnionPay card transactions. You must not process UnionPay card transactions as a manual transaction and must not process them using an EFTPOS terminal in EOV;
 - (c) you must not at any time manually enter details of the card or the transaction into the terminal nor seek manual or voice authorisation for UnionPay card transactions;
 - (d) they must be evidenced by the UnionPay cardholder signing the transaction receipt. This signing requirement also applies to pre-authorisations. In addition to signing, if a UnionPay cardholder has a PIN loaded against their card, you must also ask the UnionPay cardholder to enter their PIN into the EFTPOS terminal;
 - (e) they cannot be processed for the purpose of giving the UnionPay cardholder cash;
 - (f) if it is a pre-authorisation completion transaction, it must be processed within thirty (30) days from the date of the original pre-authorisation transaction, and
 - (g) once they are authorised and processed, can only be refunded if:
 - (i) the UnionPay card that was used in the original sales transaction is used for the refund and only if that UnionPay card and the UnionPay cardholder are both present at the time of the refund;
 - (ii) the cardholder signed a transaction receipt for the original sales transaction and signs a refund receipt for the refund;
 - (iii) details of the original sales transaction match the details of the refund transaction;
 - (iv) the refund transaction is processed within thirty (30) days of the original sales transaction; and
 - (v) the refund amount is returned to the UnionPay cardholder's account that was used for the original transaction.

Data security standards

- 3.6 Unless otherwise advised by us, you must comply with the data security standards, which, among other things, means that you must successfully complete the protocols for the data security standards within the timeframe stipulated by us or the card schemes;
- 3.7 You acknowledge and agree that:
- (a) you have processes and procedures in place that meet the data security standards and you follow those processes and procedures;
 - (b) BNZ is 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 BNZ to release details of any such data breach to the aforementioned bodies;
 - (c) if you use a third party who is involved in processing your transactions, then you must ensure that the third party confirms to you that it meets the data security standards;
 - (d) you will advise us immediately if you become aware of any data breach whether suspected, potential, anticipated, attempted, or actual relating to cardholder data held by you or on your behalf;
 - (e) if we, or BNZ, become aware of, or suspect, any such data breach we or BNZ may, in our sole discretion, appoint an investigator to complete a forensic investigation to identify the source and scope of such data breach;
 - (f) you will provide full access to your systems, databases, and premises and will arrange access to any third party systems, databases and premises that you use in the provision of your goods and/or services to us, BNZ and our investigators;
 - (g) you will be liable for all costs incurred by us and/or BNZ in relation to such investigation and remediation of any confirmed data breach; and
 - (h) where any data breach is confirmed, in order to continue processing card transactions, you must undergo a full Payment Card Industry Data Security Standard ("PCI DSS") accreditation. All costs of this accreditation exercise must be paid by you; and
- 3.8 You acknowledge and agree that if you fail to comply with clauses 3.6 (a) or (b) or if there is any data breach relating to cardholder data held by you:
- (a) we may terminate the merchant services;
 - (b) you are liable for any fine imposed upon us by the card schemes (directly or indirectly) or any other losses, costs, damages, or expenses incurred by us and/or BNZ as a result of such failure or data breach; and
 - (c) you are liable for any penalties which the card schemes levy (including any penalties levied on us and/or BNZ) in the event you suffer a card data compromise incident, and have not complied with the PCI DSS Accreditation program.

Your duties to cardholders

- 3.9 Subject to the other provisions of this agreement, you:
- (a) must accept any valid and acceptable nominated card in a transaction;
 - (b) must only send us a sales transaction when you have provided or are the provider of the goods and services to the customer;

- (c) must not accept a nominated card in a credit card transaction for giving a cardholder cash;
- (d) must perform all obligations (including, without limitation, supplying or agreeing to supply all goods and/or services) to the cardholder in connection with a sale before informing us about the sales transaction;
- (e) must not sell, purchase, provide or exchange any cardholder data to any person other than:
 - (i) us;
 - (ii) BNZ;
 - (iii) the agents you use in your business for a purpose approved by us and/or BNZ;
the card issuer;
 - (iv) as required by law; and
 - (v) when a document is no longer required to be retained, it must be destroyed in a manner which makes the information unreadable;
- (f) must, if you do sell, purchase, provide or exchange any such information referred to in 3.7(e), do so in compliance with all relevant law including privacy law;
- (g) must take reasonable steps to ensure that the information and documents mentioned in 3.7(e) are protected from misuse and loss and from unauthorised access, modification or disclosure;
- (h) must not make any representation in connection with any goods or services which may bind us, BNZ, our or BNZ's agents or service providers or any card scheme;
- (i) must not indicate or imply that we, BNZ or any card scheme endorse any goods or services or refer to a nominated card in stating eligibility for goods, services or any membership;
- (j) must not accept a nominated card or a transaction which is of a type we have previously advised you is not acceptable to us;
- (k) must provide sufficient training to your employees, contractors and other personnel to ensure you meet your obligations under this agreement;
- (l) must prominently and unequivocally inform the cardholder of your identity at all points of cardholder interaction (including without limitation on any relevant website, promotional material and invoice) so that the cardholder can readily distinguish you from any supplier of goods or services to you or any other third party;
- (m) must provide notice to any cardholder with whom you enter a transaction that you are responsible for that transaction, including for any goods and services provided, any payment transaction, related service inquiries, dispute resolution and performance of the terms and conditions of the transaction;
- (n) must not distinguish between issuers of a nominated card in processing a transaction;
- (o) must, if we have notified you that you can offer cardholders an instalment option:
 - (i) disclose to them in writing whether the instalment terms limit the goods or services that the cardholder may purchase. The disclosure must also include the shipping and handling charges and any applicable tax;
 - (ii) inform a cardholder not billed in the transaction currency that each instalment amount may vary due to currency conversion rate fluctuations;
 - (iii) subject to 3.8, ensure that the sum of the instalment transaction does not exceed the total price of the goods or services;
 - (iv) obtain authorisation for all transactions; and
 - (v) not add any finance charges to the instalment transaction; and
 - (p) you must not transfer or attempt to transfer financial liability under this agreement by asking or requiring a cardholder to waive his or her dispute rights.

Indemnity

3.10 You agree to indemnify and hold BNZ harmless from and against any fines imposed on BNZ by a card scheme because of your conduct in relation to the merchant services, including any fines imposed as a result of an unacceptable rate of chargebacks.

Surcharging

3.11 If you charge a surcharge fee in relation to a transaction:

- (a) you must ensure that:
 - (i) the surcharge fee is disclosed to the cardholder prior to the completion of the transaction and the cardholder is given an opportunity to cancel the transaction;
 - (ii) the surcharge fee is included as part of the total amount of the transaction and not collected separately;
 - (iii) the surcharge fee bears a reasonable relationship to your cost of accepting nominated cards for payment; and
 - (iv) the surcharge fee is applied on a flat rate or percentage basis; and
- (b) your disclosure to the cardholder must:
 - (i) inform the cardholder that a surcharge fee is applied;
 - (ii) inform the cardholder of the surcharge fee amount or rate;
 - (iii) not describe the surcharge fee as, or inform the cardholder that the surcharge fee is, applied by a card scheme, us and/or BNZ or a third party financial institution;

- (iv) include notices, signs or decals disclosing that you apply a surcharge fee. Such notices, signs or decals must be displayed in a conspicuous location or location at the point of sale at each of your business premises, or, in the absence of a physical point of sale, prominently during an electronic commerce transaction or communicated clearly during a MOTO transaction so that all cardholders will be aware of the surcharge fee;
- (v) be clearly displayed or communicated in the transaction environment or process, including (if there is a physical point of sale) at the terminal or cashier's desk and be of as high a contrast as any other signs or decals displayed; and
- (vi) be a minimum of Arial 10 point font.

4 ACCEPTING NOMINATED CARD DETAILS

4.1 You must:

- (a) use reasonable care to detect forged or unauthorised signatures or the unauthorised use or forgery of a nominated card or PINs;
- (b) notify us if you become aware of or suspect fraud on the part of a cardholder;
- (c) if a card transaction for a sale does not cover the full amount of the sale and the payment terms have been agreed, obtain the balance due at the time the sale is completed using another payment method. However, where a nominated card is used to make a deposit or pay an instalment, you may accept a nominated card in payment of all or part of the outstanding balance;
- (d) not state or set a minimum or maximum amount for a card transaction without our prior written consent;
- (e) not ask a cardholder to reveal their PIN or any other secret identifier;
- (f) not accept any electronic commerce transaction involving a card if a previous transaction involving that card has been charged back; and
- (g) contact us for instructions if the identification of a cardholder or the validity of the nominated card is uncertain.

Refunds

4.2 You must:

- (a) only approve any card transaction refunds up to the amount advised by us from time to time;
- (b) control and be responsible for the security of the passwords, access codes, cards or any other facility provided by us to enable you to process refunds;
- (c) 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;
- (d) only process a transaction as a refund if it is a genuine refund to a cardholder of a valid sales transaction, unless otherwise consented to by us;
- (e) if you process a refund transaction, process it to the same card that was used in the original sales transaction and be for the original sale amount of the goods or service the subject of the refund, unless otherwise consented to by us;
- (f) not give refunds for transactions by means of cash or cheque; and
- (g) not process a refund transaction as a way of transferring funds between your accounts.

Point of sale transactions

4.3 For a point of sale transaction, you must:

- (a) verify that the signature on a nominated card matches the signature (if any) on the receipt;
- (b) if the signature panel on a nominated card is blank, in addition to obtaining authorisation for the transaction, you must ask the cardholder for additional identification information but not record it. If you are satisfied that the information you are given is true and correct, you must ask the cardholder to sign the nominated card;
- (c) verify that the cardholder resembles the person in any photograph intended for identification on the nominated card; and
- (d) offer and, unless the cardholder indicates otherwise, give the cardholder a copy of the receipt immediately after completing the transaction, unless we agree otherwise in advance.

Equipment

4.4 For transactions using equipment, you must:

- (a) comply with the relevant equipment user guide;
- (b) only use equipment certified by us or the Switch Provider and that complies with the standards set by the domestic debit scheme;
- (c) ensure that you use equipment only as permitted by your agreement with us or your supplier;
- (d) without limiting any other clause of this agreement, allow our or BNZ's employees, contractors, sub-contractors or agents to enter your premises as reasonably required by us during normal business hours to:
 - (i) install, inspect, maintain and remove equipment we or BNZ own or supply; and
 - (ii) inspect the condition and operation of equipment owned by others; and

- (e) process all transactions by reading card data with the equipment, except where the transaction is an electronic commerce transaction; and
- (f) not process a transaction by manually keying details into the equipment unless the transaction is an electronic commerce transaction, in which case you must control and be responsible for the security of such manual key entry.

Website requirements

- 4.5 Unless we notify you in writing that the following information (in whole or in part) is not required you must, before you accept any electronic commerce transaction over the internet, establish and maintain at your own expense a website approved by us which clearly displays the following information:
- (a) your business name;
 - (b) the street address of your approved place of business;
 - (c) your business contact details, including telephone and facsimile numbers and an e-mail address for your business and your customer service contacts;
 - (d) 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 using CurrencySelect, you may display the price clearly stated in an approved foreign currency;
 - (e) a clear statement that your business is a New Zealand business and that all transactions will be billed in New Zealand dollars except that you may indicate that transactions will be billed in an approved foreign currency if using CurrencySelect;
 - (f) details of your return and refund policy, including how a transaction can be cancelled by a cardholder;
 - (g) details of your delivery times for goods and services. Delivery times are to be appropriate for your type of business. If the delivery is to be delayed, the cardholder must be notified of the delay and an option provided to obtain a refund;
 - (h) details of any New Zealand export restrictions (if applicable);
 - (i) if you bill a cardholder on a subscription basis in relation to an electronic commerce transaction, a statement that billing will occur on a monthly or other regular cyclical basis and this must be stated on the page of your website used by the cardholder to communicate payment details;
 - (j) card scheme brand marks for all cards that are accepted;
 - (k) consumer data privacy policy;
 - (l) security capabilities and policy for transmission of payment card details; and
 - (m) any other information which we or BNZ require by written notice to you to be displayed from time to time.
- 4.6 You must:
- (a) maintain a relationship with an internet service provider at your own expense for the purposes of maintaining the website for customers and facilitating electronic communications; and
 - (b) ensure that your business name corresponds with the name of your website and the name that will appear on cardholder statements and as advised on the transaction receipt.
- 4.7 Prior to commencing live operation of the merchant service on your website, you must successfully complete and satisfy all test scripts supplied by us and undertake your own testing in the test mode to ensure:
- (a) transactions are accessible by you through the internet payments merchant reporting module; and
 - (b) any reporting requirements you have are working to your satisfaction; and
when we are satisfied all of our operational requirements are met, we will convert you to live operation.
- 4.8 You must provide us and BNZ reasonable access to view, monitor and audit the pages of your website. You also agree that we may, at our discretion, periodically have a card scheme endorsed third party review your website to ensure compliance with any relevant laws.
- 4.9 You agree that we or BNZ may, using a card scheme endorsed and certified third party, periodically perform information security or "vulnerability" scans on your website and/or servers to ensure that you are complying with the data security standards.
- 4.10 If you wish to undertake any substantial changes to your website, you must give us at least ten (10) banking days notice. You must undertake and satisfy testing in accordance with the procedure set out in 4.7 prior to any such changes going into live operation. We shall not be obliged to continue the live operation of the merchant service until we are satisfied that all of our operational requirements are met and it is acceptable to continue with the merchant service.
- 4.11 Your website payments page must be protected by Secure Sockets Layer or any other form of security method approved by us. You must state on your website payments page that the page is secured by Secure Sockets Layer (or, if appropriate, any other form of security method approved by us).
- 4.12 Your website payments page must request that the cardholder provides the card CVC2 or CVV2 (as relevant) when entering the card details for the transaction.
- 4.13 We may require you to make alterations to your card acceptance policies and procedures to ensure you remain in compliance with the card scheme rules, including alterations to your website.

5 TRANSACTION AUTHORISATIONS AND AUTHENTICATION

Authorisation

- 5.1 You must:
- (a) without limitation to the remainder of this clause, comply with any authorisation procedures of which we advise you including, without limitation, in relation to electronic commerce transactions and MOTO transactions;
 - (b) obtain prior authorisation from us on the transaction date:
 - (i) if the transaction is for the payment of an instalment for goods and/or services; or
 - (ii) as instructed by us through the equipment or otherwise;
 - (c) for a point of sale transaction, obtain prior authorisation for any transaction on the transaction date where:
 - (i) the embossed or printed account number on the nominated card is different from the account number or the displayed account number indented or encoded or otherwise shown on the nominated card;
 - (ii) you suspect that a signature is unauthorised or there is an unauthorised use or forgery of the nominated card;
 - (iii) the nominated card signature panel is blank; or
 - (iv) we have told you not to accept the nominated card, and seek to retain the nominated card by reasonable, peaceful means until that authorisation is given; and
 - (d) for an electronic commerce transaction, submit the expiration date of the nominated card and the CVC2 and CVV2 (as relevant) to us, identify the transaction as an electronic commerce transaction and seek authorisation using the applicable equipment.
- 5.2 For a MOTO transaction or an electronic commerce transaction requiring goods to be shipped, you may obtain an authorisation from us up to seven (7) days before the date on which the goods are actually shipped. If your delivery of merchandise is not completed or services are not performed within seven (7) days of the date of such authorisation, then that authorisation will have expired and a fresh authorisation must be obtained for the balance of the transaction in respect of which delivery of merchandise has not been completed or services have not been performed.
- 5.3 You must seek to recover or retain a nominated card by reasonable, peaceful means when we request you to do so. You must notify us when you have recovered or retained a nominated card and comply with such further instructions we give you.
- 5.4 A point of sale transaction or electronic commerce transaction will usually process an authorisation request automatically. If, for any reason, such transactions are not processed automatically, you must obtain authorisation by another method.
- 5.5 You acknowledge and agree that obtaining authorisation for a transaction is not a guarantee of payment arising from that transaction. An authorisation only confirms that at the time the authorisation was obtained the card number exists and is valid and the card has not currently been listed as lost or stolen at the time of the transaction and that the card has sufficient funds to cover the transaction. For example, it does not guarantee that the person using the card is the genuine cardholder.

Authentication

- 5.6 You acknowledge and agree that to participate in the authentication procedures: you must:
- (a) currently be receiving internet merchant services from us;
 - (b) have had your payment processing systems and equipment approved by us;
 - (c) maintain and operate the merchant software in accordance with all the requirements which we or the card schemes have notified to you;
 - (d) keep any password we give you secure and not disclose it to any third party who has not been authorised by us or you;
 - (e) comply with all manuals, guides or directions we or the card schemes give you from time to time regarding the authentication procedures;
 - (f) unless we agree otherwise, send us an authentication request each time a cardholder wishes to purchase goods or services from you on your website using their card;
 - (g) carry out any additional authorisation procedures which arise out of authenticated transactions and of which we advise you in writing; and
 - (h) immediately take action to remedy any default or non-compliance of which you become aware and promptly notify us when you expect to be able to remedy the default or comply as the case may be; and
- 5.7 you must not:
- (a) change your payment processing systems and equipment for the purposes of the authentication procedures unless we have first approved the proposed change to any of them; or
 - (b) use or alter any logos, names, trademarks, get ups or holograms for a card scheme for or in relation to the authentication procedures without our prior written consent.
- 5.8 Subject to the card issuer adhering to applicable card scheme rules relating to authentication, if you send us either:
- (a) an authenticated transaction; or
 - (b) an attempted authenticated transaction, which we then authorise and process,

we will not charge it back to you on the basis that the cardholder claims that they were not the person who purchased goods and services from you on your website. In this case, to the extent of any inconsistencies between 5.7 and the remainder of these general terms and conditions, 5.7 prevails.

- 5.9 Subject to the card issuer adhering to the applicable card scheme rules relating to authentication, if you send us:
- (a) either:
 - (i) a non-authenticated transaction; or
 - (ii) an unavailable for authentication transaction, we may in our absolute discretion decide to accept the transaction for processing and, if we do:
 - (i) we will process it as though you were not participating in the authentication procedures and the usual chargeback provisions in 9 will apply; and
 - (ii) you acknowledge and agree that we may but are not obliged to accept any further non-authenticated transactions or unavailable for authentication transactions from you for processing.
- 5.10 You must not accept a failed authenticated transaction for processing.
- 5.11 You acknowledge and agree that:
- (a) the authentication procedures are based on card scheme rules which may vary from time to time. You agree to promptly comply with any variations which are initiated by the card schemes or are introduced by us and of which you are notified in writing by either us or the card schemes;
 - (b) any fines, penalties or similar costs imposed on us by a card scheme because of your conduct arising out of the authentication procedures are payable by you as a fine or penalty in accordance with clause 13 of this agreement;
 - (c) we are not liable for any loss or damage (including indirect and consequential) you suffer or incur as a result of your participation in the authentication procedures except to the extent that your loss or damage was caused by our negligent or fraudulent acts or omissions;
 - (d) if you send us either a non-authenticated transaction or an unavailable for authentication transaction you do so at your own risk and understand that in doing so we may chargeback the transaction to you on the basis that the cardholder alleges that they did not purchase goods or services from you on your website;
 - (e) we may decide to suspend or terminate your participation in the authentication procedures in our absolute discretion; and
 - (f) once you no longer receive internet merchant services from us you no longer are entitled to participate in the authentication procedures and must immediately destroy the password and any other materials including without limitation any guides and manuals regarding the authentication procedures which we have given you.
- 5.12 If we decide to suspend or terminate your participation in the authentication procedures:
- (a) we will notify you as soon as practicable of our decision to do so;
 - (b) while your participation has been suspended or terminated, we will continue to process your transactions in accordance with this agreement as if you had not participated in the authentication procedures. In this case, the usual chargeback provisions in 9 will apply; and
 - (c) any such suspension will continue until we notify you of our decision to reinstate your participation.

Recurring transactions

- 5.13 You may only process a transaction as a recurring transaction if:
- (a) you have obtained cardholder permission (either electronically or in hardcopy) to periodically charge for a recurring service;
 - (b) you retain this permission for the duration of the recurring services and make it available to us on request; and
 - (c) you provide a simple and accessible online cancellation procedure, if the cardholder's permission to periodically charge for a recurring service was initially accepted online.

6 BNZ SERVICES

You and we each acknowledge that, by separate agreement made between us and BNZ, BNZ has agreed to provide the BNZ Services to us in connection with the provision by us of the merchant services and you acknowledge and agree that:

- (a) you may benefit from the BNZ Services provided to us;
- (b) we may provide any information that we obtain about you, this agreement and our provision of the merchant services to you to BNZ and BNZ may use that information in relation to the ongoing provision, suspension or termination of the merchant services, BNZ Services, or BNZ's other rights and obligations under this agreement or under its agreement with us to provide the BNZ Services;
- (c) nothing in this agreement is to be taken to be an offer by BNZ to provide, or to be an obligation to provide, the BNZ Services directly to you;
- (d) nothing in this agreement is to be taken to be an offer by BNZ to provide, or to be an obligation to provide, any service directly to you;
- (e) BNZ is not liable to you in respect of any amount payable to you in connection with your use of the merchant services;
- (f) the amount of any payment request processed as a card payment using the BNZ Services will be paid to us by BNZ and will be credited to your account by us under the terms of this agreement;
- (g) we are responsible for dealing with complaints or disputes relating to payment requests and transactions and you will refer any such complaints or disputes ("Dispute") immediately to us for resolution in accordance with our dispute resolution procedures;
- (h) you will provide all assistance reasonably required by us to resolve a Dispute; and

- (i) BNZ is not liable (including liability for negligence) for any loss or damage caused directly or indirectly to you by BNZ's provision, or failure to provide, the BNZ Services to us.

7 RECEIPTS

- 7.1 Unless you have received prior written approval from us, you must prepare a receipt for each transaction. The information contained on it must be identical with the information on any other copy and must legibly include:
- (a) the amount of the transaction;
 - (b) its date and time (if practicable);
 - (c) a description of any goods or services sold sufficient to identify them;
 - (d) details of any cash provided;
 - (e) an indication of the relevant card scheme;
 - (f) the currency symbol if it is an approved foreign currency;
details of card number (in truncated form), cardholder, terminal (if any) and merchant;
 - (g) the transaction authorisation number (if any);
 - (i) the signature of the cardholder for a point of sale transaction (unless a PIN is used instead of a signature), such signature having been verified by you with reference to the signature on the card;
 - (ii) card expiration date;
 - (h) for chip card transactions, all requirements of the card schemes of which we notify you;
for electronic commerce transactions:
 - (i) the merchant's name most recognisable to the cardholder;
 - (ii) customer service contact information;
 - (iii) terms and conditions of sale, if restricted, including details of any restrictions on returns or refunds;
 - (iv) the exact date that any free trial ends, if offered;
 - (v) cancellation policy;
 - (vi) whether the transaction is a debit or credit transaction;
 - (vii) your website address; and
 - (viii) a unique order identification number (as determined by you);
 - (i) the surcharge fee (if any), indicated in the transaction currency; and
 - (j) all other requirements of the card schemes of which we notify you from time to time.
- 7.2 Receipts for electronic commerce transactions must not contain any details of the cardholder's account or the cardholder number, unless we agree otherwise.
- 7.3 For a point of sale transaction, you must give the cardholder a copy of the receipt immediately after completing the transaction.
- 7.4 For an electronic commerce transaction you must send the cardholder a copy of the receipt immediately following completion of the transaction. The receipt may be sent by email, wirelessly delivered formats such as SMS (Short Message Service) text messages or by facsimile or by surface mail. If a link to a website is provided, you must provide clear instructions to the cardholder for accessing the receipt on the website.
- 7.5 For a remote transaction (other than one which is an electronic commerce transaction), you must give the cardholder a copy of the receipt as soon as is reasonably possible after one is requested by the cardholder. In addition, you must write 'MO' for a mail order or a facsimile order and 'TO' for a telephone order on the signature line of the receipt.
- 7.6 You must not require a cardholder to sign a transaction receipt until the final transaction amount is entered on the receipt.
- 7.7 You must retain for at least twelve (12) months after a transaction:
- (i) for a point of sale transaction, the original receipt; or
 - (ii) for a remote transaction, the receipt and any document which is evidence of the cardholder's request to you to charge amounts through the nominated card.
- 7.8 You must provide us with the receipt or any other required evidence of the transaction within seven (7) days if we ask for it. If you fail to do so to our satisfaction, we may charge a sales transaction back to you if the amount cannot be collected from the cardholder.
- 7.9 You must allow us to examine your books of account or records relating to any transaction.

8 INFORMING US ABOUT TRANSACTIONS

- 8.1 We have no liability for any information given to us until we are satisfied it has been received in accordance with this agreement.
- 8.2 You must give us information about a transaction:
- (a) by entering the transaction immediately if you are using equipment;
 - (b) within the timeframes we specify from time to time in relation to other transaction methods; or
 - (c) within three (3) banking days of our request to you if we require any information in respect of an electronic commerce transaction.
- 8.3 In giving us information on a transaction or otherwise for the purposes of this agreement, you warrant that:
- (a) all the particulars are true;
 - (b) the transaction is valid and acceptable; and
 - (c) the cardholder is not disputing the transaction or making a set-off or counterclaim.
- 8.4 In giving us the information referred to in 8.2, you give us an irrevocable order to act in relation to that information in accordance with this agreement.
- 8.5 You must give us information about a transaction only in the form and using a method approved by us for your use.
- 8.6 In addition to any other information you are required to give us about a transaction, you must separately and uniquely identify any transaction which we have previously advised you is a high risk transaction.
- 8.7 Electronic commerce transactions must be separated from MOTO transactions when submitted to us for processing.

9 TRANSACTIONS NOT VALID OR NOT ACCEPTABLE

- 9.1 A transaction for a sale, refund or provision of cash is not valid if:
- (a) the transaction is illegal;
 - (b) the signature on the, receipt or authority is forged or unauthorised;
 - (c) the transaction is before or after any validity period indicated on the relevant nominated card;
 - (d) we have told you not to accept the nominated card;
 - (e) the transaction is not authorised by the cardholder;
 - (f) the particulars on the copy of the receipt given to the cardholder are not identical with the particulars on any other copy;
 - (g) the price charged for the goods or services is more than your normal price for them;
 - (h) another person has provided or is to provide the goods, services or cash the subject of the transaction, or you arranged for another person to process the transaction;
 - (i) the goods, services or cash the subject of the transaction which you are supplying or arranging to be supplied were not actually supplied to a genuine customer, or an intention not to supply the goods, services or cash has been indicated, in either case regardless of whether or not you are responsible for supplying the goods, services or cash;
 - (j) the transaction did not relate to the actual sale of goods or services to a genuine customer;
 - (k) the goods, services or cash were supplied outside New Zealand without our consent;
 - (l) the transaction is offered, recorded or billed in a currency other than New Zealand dollars unless the transaction is offered, recorded or billed in an approved foreign currency that you are authorised to use;
 - (m) you have not complied with your obligations under this agreement in relation to a transaction;
 - (n) the details are keyed into equipment in an electronic commerce transaction and you did not legibly record on a receipt the information required by this agreement;
 - (o) it is a point of sale transaction in which the nominated card was not presented or signed;
 - (p) it is a remote transaction in which you did not record reasonable identification details for the cardholder and the expiry date for the nominated card, and in the case of ecommerce transactions the CVC2 & CVV2 (as relevant);
 - (q) it is a debit card transaction in which you charge a cardholder a fee for the provision of cash;
 - (r) it is a credit card transaction in which:
 - (i) you collected or refinanced an existing debt including, without limitation, the collection of a dishonoured cheque or payment for previous card charges; or
 - (ii) you provide a cardholder with cash (not including travellers cheques or a currency other than New Zealand dollars in which we have given prior written consent to you to process transactions);

- (s) it occurs during a period in which your rights under this agreement were suspended under 17.2 or the date of the transaction was after the date this agreement was terminated; or
 - (t) you cannot give a receipt as required under this agreement.
- 9.2 At our or BNZ's election, a transaction for a sale, refund or provision of cash is not acceptable if:
- (a) the cardholder disputes liability for the transaction for any reason or makes a claim for set-off or a counterclaim; or
 - (b) BNZ or we decide, at our discretion, is not acceptable.
- 9.3 You acknowledge and agree that BNZ may:
- (a) refuse to accept a transaction if it is not valid or not acceptable;
 - (b) charge a transaction that is not valid or not acceptable back to you (including by directly refunding a transaction to a cardholder) if we have already processed the transaction, even if we have given you an authorisation (either electronically or by telephone);
 - (c) charge a transaction back to you if that transaction is charged back to BNZ by the relevant issuing bank, BNZ's payment processing agent or contractor or card scheme although we have already processed the transaction, even if we have given you an authorisation (either electronically or by telephone); and
 - (d) at any time in BNZ's absolute discretion by written notice require you to grant BNZ security to cover your potential liability as assessed by BNZ in relation to transactions that BNZ may chargeback to you under 10.6(b).
- 9.4 You must without endangering yourself or your personnel seek to recover any nominated card used in a transaction that is invalid or unacceptable if required by us.

10 REPORTING AND SETTLEMENT OF TRANSACTIONS

- 10.1 You acknowledge and agree that:
- (a) BNZ has no obligation to provide you with any statement of account or details of any transactions carried out by us on your behalf; and
 - (b) we shall be solely responsible for informing you whether a transaction has been authorised.
- 10.2 BNZ will provide settlement to us on each business day for the gross amount of all funds received from the card schemes in respect of transactions processed under this agreement, less any chargebacks or refunds. We are responsible for disbursing to you, in accordance with your funding, reserve and payment arrangements with us, any settlement amounts received from BNZ in respect of transactions processed under this agreement.
- 10.3 You agree to direct any queries regarding settlement to us.
- 10.4 You acknowledge and agree that:
- (a) BNZ is not liable to you in respect of any amount payable to you in connection with your use of the merchant service;
 - (b) the amount of any transaction processed by you using the merchant service will be paid to us in accordance with the terms of the BNZ Service;
 - (c) BNZ will not pay any amount owing to you in connection with transactions submitted by you to us for processing under this agreement; and
 - (d) we are solely responsible for accounting to you in respect of any transactions submitted by you to us for processing on your behalf.
- 10.5 Unless we agree otherwise, you must have at least one New Zealand dollar account with a New Zealand registered bank for recording transactions in New Zealand dollars.
- 10.6 If we agree that you may process transactions in an approved foreign currency then, unless we agree otherwise, you must, if we so require, also have an account with a New Zealand registered bank for recording transactions in that foreign currency which account can be used for the purposes referred to in 10.7 and 10.8.
- 10.7 Subject to 10.9, we must pay to the account you nominated in clause 10.5 or 10.6 (as applicable) the full amount of all valid and acceptable sales and cash transactions processed by you in the applicable currency, which shall be New Zealand dollars unless we agree otherwise.
- 10.8 We will debit your nominated account with the full amount of all:
- (a) valid and acceptable refund transactions processed by you; and
 - (b) chargebacks, in the applicable currency, which shall be New Zealand dollars unless we agree otherwise.
- 10.9 We reserve the right to withhold payment to your nominated account of any amount within our discretion for such period as we consider necessary, where we have reasonable grounds to suspect you have processed transactions otherwise than in accordance with this agreement.
- 10.10 Where we exercise our rights under 10.9, we will notify you in writing of any action taken by us under 10.7 within two (2) banking days of such action being taken.
- 10.11 We must give you access to information each month showing the full amount of all transactions processed by us during the previous month. You may raise any issue that you have concerning an amount paid, or not paid to you, within three (3) months of the date of payment, or of the date the payment was due. We and/or BNZ may charge you a fee for investigating any such issue.

- 10.12 If you intend to advertise and bill electronic commerce or MOTO transactions in a foreign currency then, unless BNZ agrees otherwise, that foreign currency must be an approved foreign currency and you must obtain our and BNZ's prior written consent, which may be subject to conditions including, without limitation, a requirement to enter into a new agreement.
- 10.13 We will notify you from time to time which foreign currencies are approved foreign currencies for electronic commerce or MOTO transactions.
- 10.14 If an electronic commerce or MOTO transaction is recorded in an approved foreign currency then, unless BNZ agrees otherwise, we will process in New Zealand dollars (using an exchange rate determined by us) any event relating to that transaction (such as paying for the original transaction, making a chargeback or a refund in respect of that transaction).
- 10.15 You acknowledge that for electronic commerce and MOTO transactions you will bear any additional costs, losses or benefits incurred as a result of movements in the exchange rate of an approved foreign currency between the time of the transaction and the time we convert the approved foreign currency to New Zealand dollars for posting to your account.
- 10.16 You acknowledge that for electronic commerce and MOTO transactions that are refunded or charged back, you will bear any additional costs, losses or benefits incurred as a result of movements in the exchange rate of an approved foreign currency between the time of the transaction and the time of the refund or chargeback.

11. NON-STANDARD CARDS

To accept non-standard cards, you must contact and establish a separate agreement with the card issuer. We accept no responsibility for your acceptance of any non-standard cards, whether you do so with equipment supplied by us or otherwise.

12. PROMOTIONAL MATERIAL AND ADVERTISING

- 12.1 We must supply you with promotional material for the nominated cards.
- 12.2 You consent to us advertising or publishing your acceptance of nominated cards to users or potential users of those cards.
- 12.3 You must:
 - (a) display promotional material we supply to you prominently at the point of sale at each of your business premises and on any website you maintain to indicate you accept nominated cards for transactions except where we agree otherwise; and
 - (b) use advertising and promotional material for the nominated cards or which show a card scheme logo or mark only with our consent and in the manner we approve.
- 12.4 You must not accept cards for or display card scheme marks on, a website that is used in relation to the purchase or trade of photographs, video imagery, computer-generated images, cartoons, simulation, or any other media activities as determined by the card schemes.

13. EQUIPMENT SUPPLIED

Equipment

- 13.1 You must have the equipment that we require from time to time. You may obtain equipment from us or from others provided we advise you the equipment is certified by BNZ or the Switch Provider.
- 13.2 You may use equipment to accept nominated cards for:
 - (a) transmitting transaction information to us and anyone else approved by us;
 - (b) crediting funds to your nominated account in payment of goods and services sold to cardholders and cash supplied to them by you;
 - (c) enabling a cardholder to debit their account;
 - (d) crediting funds to a cardholder's account and debiting your account if a cardholder returns merchandise which the cardholder paid for using a nominated card, and
 - (e) for any other purpose approved by us.
- 13.3 Equipment we own and which we have sent to you always remains our property. If you neglect, misuse, lose or damage our equipment you must pay us the full cost of any necessary repairs or replacements. We may choose whether equipment should be repaired or replaced. We may reasonably determine the replacement value at our sole discretion.

Software

- 13.4 You must comply with any additional terms and conditions we prescribe from time to time in relation to software which we supply, or arrange to supply, to you as part of the merchant services.
- 13.5 We will not be responsible in any way for anything which may arise from your use of, or inability to use, software which we supply, or arrange to supply, to you as part of the merchant services.
- 13.6 If you use software which we supply, or arrange to supply, to you as part of the merchant services, you must display (on the page of your website used by the cardholder to communicate payment details) in relation to the software such logos which we give you, in the size and location prescribed by us.

14. INTELLECTUAL PROPERTY

- 14.1 Subject to the remainder of this clause, you acknowledge that all intellectual property rights subsisting in the materials provided by us or BNZ or developed by or for us or BNZ, pursuant to, for the purpose of or in connection with this agreement, vests in us or BNZ (as applicable) and is our or BNZ's property (as applicable) including, but not limited to:
- (a) any lists of cardholder data (whether personalised or not) and the promotional material we supply you;
 - (b) any trademark, business name, trading style or get up;
 - (c) any computer program; and
 - (d) any report, file, script, inventory, database, record or information required to be created, maintained or provided by you pursuant to, for the purpose of or in connection with this agreement.
- 14.2 You undertake, at BNZ's or our reasonable request, to swear all oaths, make all declarations, execute all documents and do all other things necessary to vest in us or BNZ, or our or BNZ's assignees or successors, any intellectual property rights in which we or BNZ have right, title and interest.
- 14.3 Without limiting the generality of the remainder of this agreement you must not without BNZ's consent:
- (a) use or alter BNZ's trademarks, business names, trading styles or get ups whether as part of your corporate or business name or on or in relation to any goods or services;
 - (b) reproduce or modify any of BNZ's computer programs; or
 - (c) merge or use any report, file, script, inventory, database, record or information referred to in 14.1(d) in or with any other information which is held by you and which is not obtained or generated by you in connection with or in relation to the performance of this agreement.
- 14.4 If BNZ allows you to use one of its trademarks, business names, trading styles or get up, BNZ grant to you a royalty-free, non-exclusive licence during the term of this agreement or any shorter period BNZ specify, to use that trademark, business name, trading style or get up solely for the purposes of this agreement and in the manner and form BNZ notify you from time to time.
- 14.5 On termination of this agreement and at our or BNZ's request you shall assign to us or BNZ (as applicable) all the intellectual property rights in and to all software designed specifically for the merchant services the subject of this agreement and all modifications and enhancements and application development undertaken by you to software specifically for the purposes of the merchant services the subject of this agreement.
- 14.6 You acknowledge and agree that:
- (a) the card scheme logos, names and holograms (the "Marks") and all intellectual property rights subsisting in those logos, names and holograms belongs to, and is or will be, vested in the card schemes;
 - (b) you will not contest the ownership of the Marks for any reason;
 - (c) all rights, titles and interests in BNZ trademarks and any intellectual property subsisting in them belongs to and is or will be vested in BNZ and its related companies;
 - (d) all goodwill arising from the use of BNZ trademarks, business names, trading styles or get ups pursuant to this agreement is for the benefit of BNZ and is and will remain vested in BNZ and its related companies;
 - (e) the card schemes may at any time, immediately and without notice, prohibit you and/or BNZ from using any of the Marks for any reason; and
 - (f) you may only use advertising and promotional material for the cards or which show a card scheme Mark in the manner BNZ approves.

15. INDEMNITY AND SET-OFF

- 15.1 You must indemnify us and/or BNZ for all losses and liabilities we and/or BNZ incur (including claims by BNZ) because:
- (a) you did not observe any of your obligations under this agreement;
 - (b) we and/or BNZ could not exercise all or any part of our and/or BNZ's rights under this agreement;
 - (c) of any dispute between you and a customer over a transaction;
 - (d) of any wilful default, negligence, fraud, act or omission by you or any of your agents or representatives relating to this agreement;
 - (e) of any infringement by you or your agents or representatives of another person's intellectual property rights;
 - (f) any warranty that you made under this agreement is untrue;
 - (g) of any use of equipment owned by us, BNZ or others, by you, your employees, contractors, agents or invitees including, without limitation, in relation to transactions involving nominated cards and those involving non-standard cards or loyalty programmes;
 - (h) of any event relating to a transaction in a foreign currency;
 - (i) we and/or BNZ exercised any of our and/or BNZ's rights under this agreement; or
 - (j) you have taken legal action against us and/or BNZ resulting in a costs order in our and/or BNZ's favour or we and/or BNZ have incurred legal costs against you in enforcing our and/or BNZ's rights under this agreement on a solicitor and own client basis or recovering any amounts you owe us and/or BNZ.

- 15.2 It is not necessary for us and/or BNZ to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.
- 15.3 You must indemnify us, BNZ, any of BNZ's payment processing agents or contractors and the Switch Provider for all losses and liabilities we, those agents or contractors or BNZ or the Switch Provider incur as a result of misuse of the equipment in giving refunds or manually keying in transaction details.
- 15.4 These indemnities survive termination of this agreement.
- 15.5 If you have any liability to us and/or BNZ under this clause or any other part of this agreement, we and/or BNZ may set-off that liability against any liability we and/or BNZ have to you.
- 15.6 If any losses or liabilities incurred by us and/or BNZ under this clause or any other part of this agreement are in a foreign currency amount, then we may convert that amount into New Zealand dollars at our then prevailing spot rate of exchange.

16. VARIATION AND WAIVER

- 16.1 Except where expressly provided otherwise in this agreement, we may vary a condition of this agreement or any merchant service guide or manual provided by us to you for the purposes of this agreement or any schedule or annexure to this agreement at any time by giving you notice in writing. The variation begins on the date of the notice or a later date specified on it.
- 16.2 Unless otherwise specified in this agreement or separately agreed between you and us, we will give you, and you agree to receive, notice of changes to fees, charges, or any other changes to this agreement in writing at least fourteen (14) days before the change takes effect.
- 16.3 You or we may only waive a right created by this agreement by giving the other notice in writing.

17. TERM, TERMINATION AND SUSPENSION

- 17.1 You must stop accepting a nominated card immediately if:
 - (a) We or BNZ give you notice to do so; or
 - (b) this agreement terminates.
- 17.2 We or BNZ may terminate this agreement or suspend your rights under this agreement, or any part of it, at any time by giving you notice in writing. The notice does not have to state a reason.
- 17.3 The ending (including by expiration of the term of the agreement, or by termination by you or us) or suspension of the agreement or any part of it does not affect any of your, our or BNZ's rights and obligations which arose before it ended or was suspended including, without limitation, in relation to our right to chargeback transactions and our or BNZ's right to recover accrued fees, charges, penalties, fines and costs.
- 17.4 When any part of the agreement ends, or otherwise at our request, you must return to us and BNZ all stationery, equipment, guides and other material we or BNZ supplied in connection with a merchant service covered by that part including, without limitation:
 - (a) any promotional material with which we have supplied you;
 - (b) any material containing a card scheme logo or mark; and
 - (c) any materials provided by us or BNZ, and you must remove any card scheme logo or any materials we or BNZ have provided you with from any of your business premises or websites and if any materials are held electronically by you, your personnel or on your behalf, you all must cease to use this material immediately, and, if we request, delete that material as soon as reasonably practicable
- 17.5 When any part of this agreement ends you must immediately pay us any outstanding fees, charges and costs due under this agreement.
- 17.6 Until you have certified in writing to us and BNZ that materials referred to in 17.4 have been returned to us as required by 17.4, you must continue to pay any fees, charges and costs due to us in relation to that material as if the agreement had not terminated.
- 17.7 This agreement will terminate automatically and immediately if our registration as a merchant acquiring agent or independent sales organisation with any card scheme is cancelled or if our agreement with BNZ for the provision of merchant services is terminated for any reason.
- 17.8 You acknowledge that we will disclose termination of this agreement for any reason to BNZ and you authorise BNZ 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 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.
- 17.9 This clause 17 survives termination of this agreement.

18. OUR CONSENT

We and BNZ may give our consent for the purposes of this agreement conditionally or unconditionally or withhold it in our absolute discretion unless this agreement expressly indicates differently.

19. 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 (either by telephone or electronically), that we have guaranteed, endorsed or made representations about:

- (a) the cardholder's creditworthiness;
- (b) the correct identity of the cardholder;
- (c) that the transaction is valid and acceptable;
- (d) that you have complied with your obligations under this agreement; or
- (e) the transaction will not be charged back or reversed, and you waive any right to claim that we do.

20. YOUR AND OUR RIGHTS

- 20.1 You must not assign, charge or grant a security interest over your rights under this agreement.
- 20.2 We may enter this agreement as principal or agent.
- 20.3 We may, without your consent:
 - (a) transfer our interest in this agreement or equipment we own, or give another person an interest in or form of security over either of them; or
 - (b) subcontract any of our obligations under this agreement.
- 20.4 The rights, powers and remedies which you and we have under this agreement are in addition to the ones provided independently by law. You and we may exercise the rights, powers and remedies under the law as well as any of those provided by this agreement.
- 20.5 If you or we do not insist upon or enforce a right arising from a breach of this agreement, that does not mean that you or we have given up or waived that right or any other right arising from that breach or any later breach.
- 20.6 Nothing contained or implied in this agreement constitutes you the partner, agent, or legal representative of us for any purpose or creates any partnership, agency or trust, and you have no authority to bind us in any way.

21. NOTICE

- 21.1 A notice must be in writing and:
 - (a) given personally to the addressee (which, in our case, includes one of our officers at the address last advised);
 - (b) sent by prepaid post to the address last advised;
 - (c) sent by facsimile to the facsimile number last advised; or
 - (d) sent by email to the email address last advised.
- 21.2 Until further notice is given, the address last advised shall be the address for you and us shown in this agreement.
- 22.2 You must immediately advise us of any change in your address or contact details.
- 22.3 If a notice is sent by post, it is taken to be received on the third banking day after posting.
- 22.4 If a notice is sent by facsimile, it is taken to be received on production of a transmission report by the transmitting machine which indicates that the whole facsimile was sent.
- 22.5 If a notice is sent by email, it is taken to be received within twelve (12) hours of sending the email, provided that the sender:
 - (a) has keyed in the correct email address (as advised by the recipient to the sender under 21.1(d)); and
 - (b) has not been informed, by way of an email alert, that the message has failed to reach its intended destination or recipient.
- 22.6 A notice takes effect from the time it is delivered unless a later time is specified in it.
- 22.7 Any legal process or notice of legal process (for example, a summons) may be served on you or us by delivering or leaving it at your or our last advised physical address or by any other method or service permitted by law.

22. FURTHER ASSURANCES

You agree, at your own expense, to:

- (a) execute and do everything else necessary or appropriate to bind you under this agreement; and
- (b) use your best endeavours to cause relevant third parties to do likewise.

23. GENERAL INFORMATION

We will provide you upon request with general information dealing with our procedures for handling disputes, the time within which disputes will normally be dealt with and indicating that disputes will be dealt with by staff with appropriate powers to resolve disputes.

24. PUBLICITY

- 24.1 You agree not to make any press or other announcements or releases relating to this agreement and the transactions the subject of this agreement without our prior approval.
- 24.2 The approval required under 24.1 shall include the manner in which the announcement or release is to be made and its form and its content.
- 24.3 Notwithstanding the above clauses, you may make an announcement or release only to the extent that such is required by law, in which case your obligations in clause 26.8 will apply to the announcement or release as if it was confidential information.

25. SEVERABILITY

If any provision of this agreement is held to be unenforceable or invalid for any reason then:

- (a) that provision is deemed to be modified to the extent required to remedy the unenforceability or invalidity; or
- (b) if it is not possible to remedy the unenforceability or invalidity, that provision is to be severed from this agreement, and this agreement will otherwise remain in full force.

26. CONFIDENTIAL INFORMATION AND PRIVACY

- 26.1 You authorise us to collect from, and disclose to, any person any information in connection with this agreement or in relation to us providing the merchant services to you, even where such information is subsequently shown to be inaccurate. You authorise any person to provide any information about you to us which we may require in connection with this agreement. These authorisations survive the termination of this agreement.
- 26.2 If you are an individual, under the Privacy Act 1993 you have a right of access to, and correction of, personal information held by us about you.
- 26.3 You authorise us to disclose to any card scheme advice of termination of this agreement and merchant services and the reasons (if any) for the termination. You acknowledge that the information concerning termination of this agreement and merchant services 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.
- 26.4 You agree that we may disclose to any person the fact that all or part of this agreement or the merchant services has been terminated or suspended. You authorise us to disclose information concerning the termination to any credit provider for the purpose of notifying that credit provider of that termination and the reason for it occurring. Termination and subsequent listing of the termination may affect your ability to obtain merchant facilities with another acquirer.
- 26.5 You:
- (a) must keep any confidential information confidential;
 - (b) may use the confidential information but only in relation to this agreement;
 - (c) may disclose the confidential information to enable you to perform your obligations under this agreement but only to your permitted personnel to the extent that they have a need to know;
 - (d) must not copy the confidential information or any part of it other than as strictly necessary for the purposes of this agreement and must mark if required by us any such copy "Confidential – BNZ";
 - (e) must implement security practices against any unauthorised copying, use, disclosure (whether that disclosure is oral, in writing or in any other form), access and damage or destruction;
 - (f) must immediately notify us if you suspect or become aware of any unauthorised copying, use, disclosure, access, damage or destruction in any form and to any extent; and
 - (g) must comply with any of our reasonable directions in relation to the confidential information.
- 26.6 On termination or expiry of this agreement, or earlier on reasonable request by us, you must promptly return to us or (if we request) destroy or delete any or all copies of confidential information and, in any event, your right to use, copy and disclose that confidential information ceases on such termination or, if earlier, delivery of our request.
- 26.7 Your obligations under this clause continue indefinitely in relation to confidential information, even if that confidential information is returned to us, destroyed or deleted, or this agreement expires or is terminated.
- 26.8 This clause does not apply to the extent that you are obliged by law to disclose the confidential information. If you are so obliged to disclose any confidential information, you must before doing so:
- (a) notify us and provide details of the proposed disclosure;
 - (b) give us a reasonable opportunity to take any steps we consider necessary to protect the confidentiality of that information;
 - (c) provide any assistance reasonably required by us to protect the confidentiality of that information; and
 - (d) notify the third person that the information is our confidential information.

26.9 You acknowledge and agree that:

- (a) we may obtain from BNZ, any of BNZ's payment processing agents or contractors, any card scheme or a person who is involved in any card scheme, 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. This could include, for example, information relating to previous services that are substantially similar to the merchant services or any part of them;
- (b) we can use information about your merchant history and personal information about you, a related body corporate, your owners/ shareholders, officers, employees or agents, including information about you collected from third parties to assess and process your merchant application and use in relation to the ongoing provision, suspension or termination of the merchant services, or our other rights and obligations under this agreement;
- (c) we can disclose information about your merchant history and relevant personal information in the following circumstances:
 - (i) to BNZ, any of BNZ's payment processing agents or contracts, 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 schemes, card fraud detection agencies (including information about termination or suspension of merchant services and reason(s) for termination or suspension of merchant services); and
 - (ii) where the law requires or permits us to do so;
- (d) we are bound by card scheme rules and obligations to BNZ; and
- (e) all correspondence and discussions between card schemes and us are private and confidential as between us and the card schemes and you are not entitled to participate in or otherwise request a copy of such correspondence.

27. NEW ZEALAND DOMICILE REQUIREMENTS

27.1 You acknowledge that we may only provide services to you under this agreement where you:

- (a) have a permanent establishment in New Zealand through which transactions are completed;
- (b) are registered to do business in New Zealand;
- (c) have a local address in New Zealand for correspondence and acceptance of judicial process, other than a post-office or mail forwarding address; and
- (d) pay taxes in New Zealand (where required) in relation to the sales activity; and
- (e) satisfy any other domesticity requirements imposed by card schemes from time to time.

28. GOVERNING LAW

This agreement is governed by the law of New Zealand. You and we submit to the non-exclusive jurisdiction of the courts of New Zealand and courts of appeal from them.