



Terms and Conditions New Zealand

Company #: 3834196

Australian Financial Services Licence No.
418105

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The Business' application for and ongoing use of the Service is subject to the terms and conditions contained herein, as well as otherwise prescribed in the Application Form. These Terms and Conditions describe the relationship that will exist, where Payrix accepts the Business as a client, between the Business and Payrix, and the obligations that each will have to the other.

1. Engagement

- 1.1. You agree to retain and appoint Payrix as your Payment Service Provider (PSP) for the collection and processing of recurring, ongoing and/or real time Customer Payments subject to the terms and conditions of this Agreement.
- 1.2. We grant you a personal, limited, non-exclusive, revocable, non-transferable licence, without the right to sublicense, to electronically access and use the Service solely to accept and receive payments and to manage the funds you so receive.
- 1.3. You agree to advise Payrix if, during the term of this Agreement, you appoint another party to provide a similar or identical service to that provided by Payrix pursuant to this Agreement.

2. Representations and Covenants

By entering into this Agreement, you warrant that:

- 2.1. you are a duly incorporated company or registered business and conduct operations as a business;
- 2.2. if you are a trustee, the trust is validly formed;
- 2.3. if you are a trustee, you have the right of indemnity from the trust assets in respect to this Agreement;
- 2.4. you have the legal capacity and authority to execute the Application Form and to be bound by this Agreement;
- 2.5. the person who executed the Application Form is duly authorised to execute on your behalf;
- 2.6. you have obtained authority from the Customer for Payrix to Direct Debit his or her account; and
- 2.7. you are not currently and are not likely to be declared insolvent and will endeavour to not become so during the term of this Agreement. In the event that you become insolvent you agree to notify Payrix of such within two (2) calendar days of such an event occurring.

3. Indemnity

- 3.1. You agree to release, indemnify and hold Payrix, including its agents and assigns, harmless from and against all liability, claims, damages, actions or losses:
 - 3.1.1. suffered or incurred by us, including Customer claims;
 - 3.1.2. arising in any way from our collection of Customer Payments; Including but not limited to:
 - 3.1.3. any failure by you to pay fees;
 - 3.1.4. any failure by you to pay any other amount due under this Agreement;
 - 3.1.5. any matter affecting the validity of Customer Payments, affecting the creditworthiness of a Customer and/or any misrepresentation of the identity of a Customer;
 - 3.1.6. any breach by you of your obligations under or in connection with this Agreement;
 - 3.1.7. any failure by you or a Customer to provide correct information to us;
 - 3.1.8. any bank fee or charges incurred in respect of a Customer Payment under circumstances described in this clause 3;
 - 3.1.9. any failure of a Customer Payment or any of its operations or processes due to any accident, neglect or misuse by you or a third party;
 - 3.1.10. any failure of a Customer Payment or any of its operations or processes due to a computer failure;
 - 3.1.11. any failure of a Customer Payment or any of its operations or processes due to incorrect, partial or inaccurate information being provided by an integrated software management program;
 - 3.1.12. any failure of a Customer Payment or any of its operations or processes due to any viruses, security hacking or any errors in code or software;
 - 3.1.13. any instance where we hold your funds in accordance with this Agreement;
 - 3.1.14. your negligence or fraud or that of any of your employees, contractors or agents;
 - 3.1.15. the fraudulent use, misuse or theft of a DDR or eDDR or the information stored in a DDR or eDDR, whether lost, stolen or otherwise;
 - 3.1.16. any dispute arising between you and your Customer;
 - 3.1.17. any representation, warranty or statement made by you or your employees, contractors or agents, to a Customer;
 - 3.1.18. any misrepresentation, breach of contract or failure of consideration in relation to your dealings with a Customer;

3. Indemnity (cont.)

- 3.1.19. any Failed Transaction;
 - 3.1.20. any use of an eDDR or Payment Gateway;
 - 3.1.21. any claim that a payment, obligation, transaction or transfer in connection with this Agreement is void or voidable under any insolvency law;
 - 3.1.22. any failure by you to comply with the PCI Security Standards; and
 - 3.1.23. the occurrence of any event described in clause 13 below.
- 3.2. You must indemnify Payrix in accordance with clause 3.1 even if:
- 3.2.1. a Customer has been issued with a bank account or credit card;
 - 3.2.2. we have processed a Direct Debit transaction for the Customer;
 - 3.2.3. you have complied with this Agreement; or
 - 3.2.4. this Agreement has ended.
- 3.3. If we process a Direct Debit transaction, we are not warranting that:
- 3.3.1. the transaction is valid;
 - 3.3.2. the identity of the Customer is correct; or
 - 3.3.3. the Customer is creditworthy.
- 3.4. You agree that we shall be entitled to utilise and transfer any funds held in our Trust account, or any other account, on your behalf to our own account in satisfaction of the indemnity granted in clause 3.1 above without reference to you and you agree to release us in relation to any liability in respect of any such funds so applied or used.

4. Fees

- 4.1. You agree that in exchange for us providing the Services, you will pay to us the Service Fees as outlined in the Application Form signed by you.
- 4.2. You may request for us to collect transaction fees from the Customer in addition to the requested payment amount. You agree that if transaction fees passed to the Customer are unable to be collected our transaction fees will remain payable by you.
- 4.3. You agree and authorise us to deduct any fees or other monies owing from funds collected by us or from the nominated Billing account.
- 4.4. You agree and acknowledge that the rates of fees may be increased:
- 4.4.1. upon giving you 14 days' written notice;
 - 4.4.2. upon review of your actual transaction rates and the value of the Direct Debit or debit and credit card processing charges; or
 - 4.4.3. without prior notice on 30 June of each year by up to CPI or 5%, whichever is greater.
- 4.5. You agree that an additional fee surcharge as outlined in the Application Form may be applied to Premium, Super Premium and International issued cards.
- 4.6. You acknowledge and consent to Payrix retaining as its own property and part of its income under this Agreement, the interest earned on Customer Payments held in the Payrix Trust account.
- 4.7. You agree to the following as your obligations in relation to payments and fees generally:
- 4.7.1. you will promptly pay us all fees and other amounts due under this Agreement;
 - 4.7.2. you will indemnify us for all fees and other amounts due under this Agreement, whether payable by you or the Customer;
 - 4.7.3. you will ensure that your Customers execute a DDR or eDDR in a form approved by us; and
 - 4.7.4. you will reimburse us promptly for any funds which have been paid to you but to which you are not entitled under this Agreement.
- 4.8. If a Customer or you claim a refund we will not be under any obligation to pay it, however we will conduct ourselves in accordance with our Refund Policy.
- 4.9. We will:
- 4.9.1. advise if GST has been included or excluded on all fees quoted; and
 - 4.9.2. provide you with a statement and Tax Invoice when we deposit funds into your nominated account.

5. Description of Service

- 5.1. Payrix is a Payment Service Provider (PSP). We facilitate payments including recurring Direct Debit billing from bank and card accounts, realtime and e-Commerce card-based payments through our Payment Gateway, for the collection for Customer Payments.
- 5.2. The Services provided by us are administrative only and do not extend to the provision of any services or benefits except as specified in this Agreement.

5. Description of Service (cont.)

5.3. It is understood that:

- 5.3.1. we will collect recurring Direct Debit payments and any fees and interest owed by Customers;
- 5.3.2. we will process real time payments as initiated by the Customer;
- 5.3.3. Direct Debit payments may only be collected from New Zealand bank accounts, building societies, credit unions, credit cards and debitcards;
- 5.3.4. all funds collected by Direct Debit will be held in a Trust account operated by Payrix until considered 'Cleared Funds' pursuant to the provisions and in accordance with the guidelines and procedures of Payments NZ;
- 5.3.5. funds collected from credit and debit cards through an Payrix issued merchant account will be held in a Trust account operated by Payrix until considered Cleared Funds by Payrix;
- 5.3.6. funds collected from credit and debit cards through your own merchant facility will be settled directly to your assigned settlement account as per your merchant agreement with your merchant acquirer; and
- 5.3.7. subject to clause 5.4 below, we will credit funds processed through our Direct Debit facility or Payrix issued merchant account, following clearance in accordance with clause 5.3.4 and 5.3.5, to your nominated account less fees and any other amounts you owe us.

5.4. You acknowledge and agree we may hold Customer Payments and not transfer them to your nominated account if we, for any reason whatsoever, suspect that you have acted in a fraudulent, illegal, unlawful, unconscionable or improper manner in relation to Customer Payments or their collection.

6. DDR

- 6.1. You acknowledge that a DDR, whether in hard copy or electronic format, containing our logo and/or our Authorisation Code shall remain our property at all times.
- 6.2. You acknowledge that no other Direct Debit service provider or other financial institution may conduct debit transactions from Customer accounts as a result of the Customer completing a signed DDR under our logo or under our Authorisation Code unless otherwise authorised by us in writing.
- 6.3. You acknowledge that any debit transaction conducted by a company or institution without our authorisation shall be in breach of this Agreement and not a valid transaction.
- 6.4. You acknowledge that you must store all DDRs, either in hard copy or electronic format in a safe and secure place for at least seven (7) years from the date of the last transaction.
- 6.5. You acknowledge that the DDR is a separate confidential agreement we have with the Customer.
- 6.6. You acknowledge that if the Customer gives us seven (7) days written notice of termination, we will terminate the DDR immediately in accordance with the Payments NZ Limited guidelines.

7. eDDR

7.1. If you use eDDRs you must:

- 7.1.1. only use eDDRs for services whereby you will have an ongoing relationship with the Customer; or
- 7.1.2. only use eDDRs for services that do not have a significant opportunity for fraud, in the reasonable opinion of Payrix.

7.2. You must indemnify Payrix for:

- 7.2.1. any fraud in relation to the eDDR;
- 7.2.2. any error, technological or otherwise in relation to the eDDR;
- 7.2.3. any failed transactions arising through use of the eDDR; and
- 7.2.4. any loss arising from an interruption in the eDDR sending complete and correct information to perform Customer Payments.

7.3. You acknowledge that the eDDR contains confidential information which is the property of Payrix and you acknowledge that the provisions of clause 19 shall apply in respect of such confidential information.

8. Online Console and DDR

8.1. If you use the Payrix Online Console and DDRs to establish a new Customer (Payer) Record you must:

- 8.1.1. ensure that each of your staff are enrolled on our Console and have a unique user name and password;
- 8.1.2. accept all risk and responsibility with respect to the data entered;

8. Online Console and DDR (cont.)

- 8.1.3. store all paper DDRs in a safe and secure place for at least seven (7) years from the date of the last transaction;
 - 8.1.4. if requested by the Customer, provide the Customer with a printed copy of the DDR and our Direct Debit Service Agreement; and
 - 8.1.5. if requested, provide us or the Customer with a copy of the signed DDR within two (2) working days.
- 8.2. You must not:
- 8.2.1. use DDRs for Customers who you do not have an ongoing relationship with;
 - 8.2.2. use DDRs for services which have a significant opportunity for fraud, in the reasonable opinion of Payrix; or
 - 8.2.3. allow staff to disclose their unique user name or password to any other person.
- 8.3. If we suspect fraud or misuse by any person in connection with the Online Console or DDRs, we may:
- 8.3.1. restrict or remove access to the Online Console;
 - 8.3.2. cease or halt any Direct Debit; or
 - 8.3.3. reject any DDR.
- 8.4. You acknowledge that the Payrix Online Console contains confidential information which is the property of Payrix and you acknowledge that the provisions of clause 19 shall apply in respect of such confidential information.

9. API

- 9.1. We offer an application programming interface (API) to connect to the Payrix Payment Gateway, submit transaction requests, establish recurring payments, access our Hosted Payment Page service, access our Transparent Redirect service and retrieve information relating to transactions and/or Customer Payments.
- 9.2. If you are using an integrated Software Partner to establish and manage new and existing Customers, you must:
- 9.2.1. adhere to the provision and policies in clause 7 and 8 with regard to the acceptance and ongoing use of eDDR;
 - 9.2.2. ensure that each of your staff have a unique user name and password to access the integrated software; and
 - 9.2.3. accept all risk and responsibility for the identification of Customers.
- 9.3. If you are using an integrated Software Partner to establish and manage new and existing Customers, you must indemnify us for:
- 9.3.1. any fraud in relation to the API;
 - 9.3.2. any error, technological or otherwise, in relation to the API or Software Partner;
 - 9.3.3. any failed transactions arising through use of the API or Software Partner; and
 - 9.3.4. any loss arising from an interruption in sending complete and correct information to perform Customer Payments.
- 9.4. You acknowledge that the API and usage of such API by the Software Partner contains confidential information which is the property of Payrix and you acknowledge that the provision of clause 19 shall apply in respect of such confidential information.

10. Sub-Merchant

- 10.1. The conditions contained in this clause 10 apply to our merchant facilities, using the abbreviation PAY and your trading name, unless specified otherwise.
- 10.2. You acknowledge and agree that you will adhere to all the conditions in relation to the usage of an Payrix provided Sub-Merchant facility for the acceptance and processing of card based transactions in a recurring or real time environment.
- 10.3. You will accept all valid cards and process all transactions in accordance with all laws, any obligations in this Agreement and any direction of Payrix in carrying out activities related to the merchant facility.
- 10.4. All transactions are to be processed in New Zealand Dollars.
- 10.5. You agree that an additional fee surcharge as outlined in the Application Form may be applied to Premium, Super Premium and International issued cards.
- 10.6. You must not process or encourage transactions through the merchant facility that relate to, or are in connection with, the sale of goods or services that are in contravention of the laws of New Zealand.
- 10.7. We will not be responsible or liable for any delay that might occur in the processing of payments or any lost transactions that might occur where the merchant facility is not available for any reason.
- 10.8. If you have excessive Chargebacks and/or fraudulent transactions (the extent to which something is deemed excessive will be in the sole reasonable opinion of Payrix), you must take immediate action to rectify the situation. Failure to resolve the cause of the problem may result in a suspension or cancellation of the Service.

10. Sub-Merchant (cont.)

- 10.9. You are required to obtain and hold Cardholder authorisation for all recurring transactions and ensure the nominated card is within current validity at all times.
- 10.10. You may not use the merchant facility for:
- 10.10.1. impersonating any person or entity or falsely claiming an affiliation with any person or entity;
 - 10.10.2. accepting payments for goods or services provided by someone other than you;
 - 10.10.3. providing yourself or others with a cash advance from a credit card;
 - 10.10.4. any illegal purpose, or violating any local, state, national, or international law, including, without limitation, laws governing intellectual property, taxation, data collection and privacy;
 - 10.10.5. defaming, harassing, abusing, threatening, or defrauding others;
 - 10.10.6. competing with Payrix or Payrix's business partners;
 - 10.10.7. abusing the payment card system or violating the Operating Rules, in the reasonable opinion of the Card Schemes or Payrix;
 - 10.10.8. transferring funds between bank accounts held in the same name; or
 - 10.10.9. accepting payments for goods and services you may provide outside the industries that you have nominated when applying for the facility.
- 10.11. If you are conducting eCommerce transactions over the internet:
- 10.11.1. you are responsible for all goods and services offered through your website, and all acts and omissions in connection with your website;
 - 10.11.2. the URL of your website must be substantially similar to your trading name and designed in such a way that a reasonable Cardholder is able to identify it as your website;
 - 10.11.3. You will display the following on your website:
 - contact information including trading name, Business or Company #, trading address, telephone number, fax number, email address and your country of domicile;
 - a complete description of all goods and services you offer on your site;
 - a clear explanation of shipping practices and delivery policy;
 - transaction currency;
 - total cost of goods offered including shipping/handling charges and taxes;
 - Customer Service policies, including usual delivery timeframes and processes if you cannot fill the order for any reason;
 - export restrictions, if known;
 - refund/return policy;
 - privacy policy; and
 - security capabilities and policy of transmission of payment card details.
 - 10.11.4. you must, on request by us, provide us with reasonable access to view, monitor and audit the pages of your website;
 - 10.11.5. you must not return the Cardholder's number to the Cardholder either online or on the transaction receipt;
 - 10.11.6. you must not substantially change your goods or services being sold on your website or other material aspects of your website from the time merchant facilities were provided by us;
 - 10.11.7. you must keep all information on the website true, accurate, current and complete;
 - 10.11.8. you must not change your domain name without first obtaining our consent to the change of name; and
 - 10.11.9. you must fulfil Customer orders in a timely manner.
- 10.12. You are responsible for:
- 10.12.1. ensuring that the connection between your website and us is operational. We do not warrant that the provision of the Services will be continuous, uninterrupted or without errors; and
 - 10.12.2. ensuring that your website is secure and that Cardholder information is encrypted during the exchange of Cardholder information between your website and us.
- 10.13. If you are approved as an Payrix Sub-Merchant you must willingly, upon request, supply us with full details of your Service Providers, including but not limited to Web Hosting Provider, Shopping Cart Vendor System, SSL provider and the expiration of your SSL certificate.

11. Guarantee & Indemnity

11.1. In this clause 11:

11.1.1. Debtor means the Business;

11.1.2. Agreement means this Agreement;

11.1.3. Guaranteed Money means all amounts, including damages, that are payable, owing but not payable, or that otherwise remain unpaid by the Debtor to Payrix on any account at any time under or in connection with this Agreement or any transaction contemplated by this agreement, whether present or future, actual or contingent or incurred alone, jointly, severally or jointly and severally and without regard to the capacity in which the Debtor is liable; and

11.1.4. Guaranteed Obligations means obligations of the Debtor to pay the Guaranteed Money and all its other obligations to Payrix, whether monetary or non-monetary, present or future, actual or contingent, arising under or in connection with this agreement.

11.2. In consideration of any Services that Payrix may provide to or for the benefit of the Debtor, the Guarantor guarantees to Payrix the due and punctual payment by the Debtor to Payrix of the Guaranteed Money and performance by the Debtor of the Guaranteed Obligations.

11.3. If the Debtor defaults in the due and punctual:

11.3.1. payment of any Guaranteed Money, the Guarantor must pay that money on demand to, or as directed by, Payrix; and

11.3.2. performance of any Guaranteed Obligation, the Guarantor must indemnify Payrix against all losses, liabilities and expenses, including legal expenses on a full indemnity basis, that Payrix incurs, either directly or indirectly, as a result of that default and pay the amount of those losses, liabilities and expenses on demand to, or as directed by, Payrix.

11.4. The Guarantor's obligations in this clause 11 are principal obligations and may be enforced against the Guarantor without Payrix first being required to exhaust any remedy it may have against the Debtor or enforce any security it may hold relating to the Guaranteed Obligations.

11.5. This clause 11 is a continuing guarantee. The Guarantor's obligations in this document are absolute, unconditional and irrevocable. The liability of the Guarantor under this document extends to and is not affected by any circumstance, act or omission which, but for this clause, might otherwise affect it at law or in equity.

11.6. Until the Guaranteed Obligations have been irrevocably paid and performed in full, the Guarantor may not exercise any right of subrogation to Payrix and may not exercise any rights as surety in competition with Payrix.

11.7. For the consideration mentioned in clause 11.2, the Guarantor, as primary obligor, must unconditionally indemnify Payrix against, and must pay Payrix on demand the amount of, any loss that Payrix may suffer because:

11.7.1. the Guaranteed Obligations are unenforceable; or

11.7.2. the Guaranteed Money is not recoverable from the Debtor or is repaid or restored after it has been recovered, including the amount of any Guaranteed Money, or any money which, if recoverable, would have formed part of the Guaranteed Money, that is not or may not be recoverable.

11.8. The indemnity in clause 11.7 extends to any money that is not recoverable:

11.8.1. because of any legal limitation, disability or incapacity of or affecting the Debtor or any other person;

11.8.2. because any transaction relating to that money was void, illegal, voidable or unenforceable;

11.8.3. whether or not Payrix knew or should have known any of the relevant matters or facts; and

11.8.4. because of any fact or circumstance.

11.9. The Guarantor agrees that in respect of this clause 11:

11.9.1. they freely charge all of their real and personal assets and agrees to execute on demand a mortgage in registrable form in favour of Payrix as mortgagee over all or any part of its real estate containing such covenants as Payrix may require;

11.9.2. Payrix placing a caveat on the title to any real estate the Guarantor owns; and

11.9.3. they irrevocably appoint Payrix their attorney for the purpose of doing either in its own name or in its capacity as attorney such acts and things as Payrix from time to time considers necessary or expedient for the purpose of effecting all the powers and authorities contained in this clause 11.9.

12. Creditworthiness of the Cardholder

12.1. We do not guarantee a Cardholder's creditworthiness or their identity. You waive any right you may have against us by reason of any inference from the fact that a Cardholder has been issued with a card or that a transaction has been processed.

13. Liability

- 13.1. Notwithstanding anything to the contrary in this Agreement but subject to the provisions of any Prescribed Terms, our liability in respect of any claim arising in any way out of this Agreement or its performance or from any failure to perform this Agreement including, without limiting the generality of the foregoing, for breach of any condition, warranty or guarantee contained in this Agreement or in any Prescribed Term implied into or applying to this Agreement and whether that liability arises under contract, tort (including negligence), breach of statutory duty or otherwise, is limited as follows:
- 13.1.1. if any guarantee under the CCA is applicable to any service supplied by us and our liability is due to a failure to comply with the guarantee and such failure cannot be remedied or is a major failure as defined in the CCA (herein referred to as a Relevant Failure), our liability is as stated in the CCA in respect of that Relevant Failure;
 - 13.1.2. if the liability is due to a failure to comply with any condition, warranty or guarantee in respect of any service supplied by us under this Agreement and such failure is not a Relevant Failure, our liability in respect of such failure is limited to the supply of the services again or payment of the cost of having the services supplied again, as determined by us in our sole discretion; and
 - 13.1.3. in respect of all other liability, if any, our liability is limited to the aggregate amount of \$10,000.
- 13.2 We are not liable to you and you release us from all liability in tort, contract or otherwise in respect of any claim, damages, actions, losses or liabilities, including any consequential or indirect loss, arising out of or in connection with:
- 13.2.1. negligence, breach of contract or default on part of our employees, agents or contractors;
 - 13.2.2. an interruption between us and Software Partner integrated software;
 - 13.2.3. loss incurred from payments conducted from incorrect bank or card accounts where the information was supplied by you;
 - 13.2.4. a delay in new or correct information being supplied by you or Software Partner integrated software;
 - 13.2.5. any and all bank fees and charges incurred by all parties in respect to payments where any of the events described in clause 13 have taken place;
 - 13.2.6. any accident, neglect or misuse by you;
 - 13.2.7. any failure of any computer system whether it be your system, the computer systems in which we place our software to operate the Services, or the computer hardware of other related computer systems and servers; or
 - 13.2.8. the input of any incorrect information by you.

14. Refunds

- 14.1. Where a Customer Payment has been collected from a banking account, we will not enter into any agreement that requires us to transfer funds to a Customer as a refund and are not, pursuant to the terms of this Agreement or otherwise, required to do so.
- 14.2. Subject to the terms of this agreement, all funds debited from a Customer's banking account are held on your behalf in our Trust account and will, in the ordinary course, be transferred to your nominated Settlement account.
- 14.3. You acknowledge and agree that it is your obligation to determine the circumstances in which refunds will be made to your Customers and to perform any refunds relating to Customer Payments from banking accounts external to our system.
- 14.4. Where the Customer Payment has been collected from a credit or debit card via a merchant account issued by us, a refund to the Customer will only occur upon written request by you.
- 14.5. Where the Customer Payment has been collected from a credit or debit card via your own merchant facility, a refund to the Customer will only occur upon written request by you for the whole amount as per the original debit.
- 14.6. You acknowledge and agree that refunds can only be processed for the whole value of the original debit and that we will not enter into an agreement that requires us to refund partial values.
- 14.7. You acknowledge and agree that any and all transaction fees paid to us for the original transaction will not be refunded to you.
- 14.8. You acknowledge and agree that we will charge a fee for the processing of each refund.

15. Disputes, Claims, Dishonours

- 15.1. In the event that a Customer has a Failed Payment, you agree that should the Customer first contact us, we will direct the Customer to contact you or your nominated representative directly on the nominated email or contact points.
- 15.2. In the event that we receive a claim in relation to a Direct Debit, we will, in the first instance, supply to the claimant's financial institution all documents as permitted and requested to be supplied according to the Payments NZ Ltd's Rules and Procedures.
- 15.3. We may from time to time request, and you agree to supply, all documents, billing accounts, contracts and all source documents that may be required by us.
- 15.4. Should a claim by a Customer be successful, notification of the claim will be included within the Rejections Report.
- 15.5. You agree to make payment to us of all monies due and owing to us pursuant to clause 15 within 14 days of being notified by us.

15. Disputes, Claims, Dishonours (cont.)

- 15.6. We reserve the right, and you agree, to deduct the amount of any such claim or late dishonour from monies held in the Trust account in the first instance and you acknowledge and agree for us to debit any Settlement account or Billing account for the amount.
- 15.7. At our discretion, we may apply a successful claim fee as described within the Application Form, to each successfully claimed transaction. This claim fee will be deducted from your next settlement or debited from your nominated Billing account.
- 15.8. To reduce the incidence of Disputes, Claims, Dishonours and Chargebacks and to comply with Card Payment Scheme regulations, we may include all or part of your business/trading name in the debit transaction description on your Customer's account statement. You hereby consent and authorise us to establish, obtain and identify any Credit Card Merchant or Direct Debit facility by name/code which includes all or part of your business/trading name.

16. Chargebacks

- 16.1. We may refuse to accept any transactions (herein referred to as Chargebacks), or may claim indemnity from you if, in our reasonable opinion:
- 16.1.1. the transaction is invalid;
 - 16.1.2. the transaction is deemed to be not for the entity that the service is provided to;
 - 16.1.3. the transaction is fraudulent; or
 - 16.1.4. the Cardholder claims that the transaction is invalid or disputes liability for any reason.
- 16.2. Transactions which are invalid or which the Cardholder claims are invalid or disputes for any reason, where funds have been reversed back to the Cardholder, will be charged back to your account.
- 16.3. Chargebacks may be processed against your nominated account up to eighteen (18) months after the date of the original transaction.
- 16.4. Should a Customer Chargeback be successful, notification of the Chargeback will be included within the Rejections Report.
- 16.5. We will not enter into any disputes between you and your Customer in respect to a Chargeback.
- 16.6. Service fees related to a transaction that has been charged back to the Cardholder are not refundable.
- 16.7. At our discretion, we may apply a successful Chargeback fee, as described within the Application Form, to each returned transaction. This Chargeback fee will be deducted from your next settlement or debited from your nominated Billing account.
- 16.8. You must ensure that Chargebacks do not exceed 0.5% of your total transactions processed by us in any calendar month. Where Chargebacks exceed 0.5% of total transactions, your Service may be suspended immediately without notice to you. We reserve the right to not re-activate your Service, or if your Service is re-activated, we reserve the right to request a holding deposit for any further Chargebacks that may occur as a condition of re-activating the Services.
- 16.9. To reduce the incidence of Disputes, Claims, Dishonours, and Chargebacks and to comply with Card Payment Scheme regulations, we may include all or part of your business/trading name in the debit transaction description on your Customer's account statement. You hereby consent and authorise us to establish, obtain and identify any Credit Card Merchant or Direct Debit facility by name/code which includes all or part of your business/trading name.

17. Change of Ownership or Operations

- 17.1. You are required under this Agreement to provide us with sixty (60) days' prior notice in writing if you wish to or enter into a sale of your business.
- 17.2. You are required under this Agreement to provide us with sixty (60) days' prior notice if you wish to cease operations or change the control or management of your business.
- 17.3. If you give us notice of change of ownership, control or management we may:
- 17.3.1. decline to perform this Agreement with the new Operator or Owner; and
 - 17.3.2. after thirty (30) days written notice terminate this Agreement.
- 17.4. If we terminate this agreement within thirty (30) days of you notifying us of the change, you agree to provide us with the original or copies of the original signed or authorised DDR or eDDR forms.
- 17.5. If we do not terminate this agreement within thirty (30) days of you notifying us of the change:
- 17.5.1. the new Operator or Owner will be required to complete an Application Form and return the executed documents with the required additional information to us thirty (30) days prior to taking ownership, control or management of the Business and/or its operations; and
 - 17.5.2. you agree to provide the new Operator or Owner the original or copies of the original signed or authorised DDR or eDDR forms.
- 17.6. You acknowledge that it is your responsibility to ensure the new Operator or Owner completes and provides the necessary documentation to us within the specified period prior to taking over control or settlement.

17. Change of Ownership or Operations (cont.)

- 17.7. Upon the date of disposal, change of control or management of the Business (herein referred to as the Handover Date) the following processes shall apply:
- 17.7.1. payments conducted prior to the Handover Date will be paid to the outgoing Operator or Owner ; and
 - 17.7.2. payments conducted on or after the Handover Date will be paid to the incoming Operator or Owner.
- 17.8. We may refrain from accounting to the new Operator or Owner until we receive:
- 17.8.1. satisfactory evidence of the change of ownership, control or management; and/or
 - 17.8.2. properly amended ASIC records of business name records.
- 17.9. All Parties acknowledge that DDR and eDDR forms will remain the property of Payrix at all times.
- 17.10. You acknowledge that continued transaction processing may be disrupted if clause 17 has not been adhered to.

18. Term, Termination and Suspension

- 18.1. This Agreement shall commence and remain in force from the date we accept and countersign the Application Form submitted by you for a minimum period of twelve (12) months or until terminated by either Party after the minimum term, upon providing a minimum of sixty (60) days written notice to the other.
- 18.2. Upon completion of each term, this Agreement shall automatically be renewed for a further term of the same duration as the term that has just been completed unless written notice of termination is given by either party to the other party at least one (1) month prior to the expiry of the term.
- 18.3. We may terminate this Agreement upon seven (7) days notice in writing where you fail to comply with any obligations to be performed pursuant to this Agreement.
- 18.4. We may terminate this Agreement immediately without notice if, in our sole opinion, you have utilised the Services in any unlawful, unconscionable or improper manner, or are in breach of the PCI Security Standards.
- 18.5. We may, in our absolute discretion, immediately and without notice, suspend your account and refuse to process any payments or remit any payments to you if we, for any reason whatsoever, suspect or have been advised that you have acted in an unlawful, unconscionable or improper manner in utilising the Services.
- 18.6. For the avoidance of doubt, we may terminate any account suspended in accordance with clause 18.5 and in accordance with clauses 18.1, 18.3 or 18.4 above in our sole discretion, without lifting the suspension imposed in accordance with clause 18.5.
- 18.7. You hereby expressly release and indemnify us against any claim that you may have against us where we act in accordance with this clause 18, including any claim for damages, whether direct or consequential, that you may suffer as a result.
- 18.8. You acknowledge that this Agreement's term is independent to any term or contract obligations you may have with an integrated or non-integrated software vendor.
- 18.9. Upon completion of this Agreement, Payrix will provide to the Client all bank account and credit card data stored on behalf of the Client, subject to the recipient of this data, whether the Client themselves or a company acting on behalf of the Client, being certified PCI compliant and having mutual exchange arrangements with Payrix.

19. Non-Disclosure

- 19.1. For the purposes of this Agreement, 'Proprietary and Confidential Information' shall mean any and all information, whether written or oral, regarding the Business or Payrix's prospective Customers, the content of any recurring request authorisation form, prospective Customers, policies and procedures, operations, systems and future business plans. This information includes but is not limited to technical, developmental, marketing, sales, operating, performance, cost, know-how, computer software and database programming techniques and any record containing or disclosing such information or techniques, which is disclosed pursuant to this Agreement. The term Proprietary and Confidential Information shall also include any confidential information belonging to the Business or Payrix that was received or disclosed before the date of this Agreement.
- 19.2. In consideration of each Party supplying the other with Proprietary and Confidential Information, whether directly or through its representatives, advisors or otherwise, each Party agrees that it will treat as confidential all such information which is disclosed to it by the other Party, together with any reports, analyses, memoranda, notes and any other writing which is prepared by the Party receiving the information or on its behalf, which contains, reflects or is based on such information (collectively referred to as the Material) and each Party agrees that it will not, except as provided below or where required to do so by law, disclose, use or permit the disclosure or use of the Material.
- 19.3. The Material shall not be used by either Party other than directly for the purpose of meeting their obligations under this agreement.
- 19.4. Either Party may only disclose the Proprietary and Confidential Information or the Material, to the extent described in clause 19.3 above to such of its employees and advisors who need to know the information and who are informed of the confidential nature of such information and who agree to be bound by the terms of this clause as if they were a party to this Agreement. Either Party shall procure absolute compliance of the confidentiality obligations in this Agreement by such employees and advisors.

19. Non-Disclosure (cont.)

- 19.5. Each Party shall abide by Payrix's Privacy Policy when dealing with the personal information of Customers, which may be found at www.Payrix.com/au/privacy-policy/
- 19.6. The obligations on the Parties imposed by this clause 19 shall survive termination of this Agreement.

20. Privacy

- 20.1. This privacy statement relates to the personal information obtained by us in connection with the Services, including personal information about you, the Business, Company Administrator and Users.
- 20.2. We may collect personal information, including names and contact details of individuals, to facilitate the use of the Payrix Services.
- 20.3. You, the Business, Company Administrators and Users may choose not to give us your personal information. However, in these circumstances, we may not be able to provide access to the Payrix Services.
- 20.4. We may disclose personal information, as necessary, to:
- 20.4.1. our external service providers that provide services for the purpose of business, on a confidential basis, for example providers of administrative or other services, including in some cases to service providers that are not located in New Zealand;
 - 20.4.2. regulators and authorities if the law requires or permits us to do so, for example for law enforcement;
 - 20.4.3. our advisers and any party considering acquiring an interest in our business on condition that we will ensure that such third party is bound by an appropriate confidentiality agreement;
 - 20.4.4. other organisations if you request us to do so or if you consent; or
 - 20.4.5. our related body corporate as required to provide the Services.
- 20.5. We have processes in place to ensure the security of your personal information, including encryption of all data when it is transferred to our service providers and limitations on access to personal information within our organisation.
- 20.6. The New Zealand Privacy Act allows you to get access to and correct, the personal information we hold about you in certain circumstances. To obtain such access, please contact us on the details set out above.

21. Force Majeure

- 21.1. If either Party is prevented, hindered or delayed from performing its obligations under this Agreement, other than an obligation to pay money, by an event of Force Majeure, then as long as that situation continues, that party shall be excused from performance of the obligation to the extent it is so prevented, hindered or delayed, and the time for performance of the obligation shall be extended accordingly, but if time is of the essence of this Agreement, time shall continue to remain of the essence.
- 21.2. A Party affected by an event of Force Majeure shall immediately notify the other Parties of its occurrence and its effect or likely effect, and use all reasonable endeavours to minimise the effect of the event of Force Majeure and to bring it to an end.
- 21.3. For the purpose of this clause, 'event of Force Majeure' means the occurrence of an event or circumstances beyond the reasonable control of the Party affected by it including, without limitation,:
- 21.3.1. a war (declared or undeclared), insurrection, civil commotion, military action, or an act of sabotage;
 - 21.3.2. a strike, lockout or industrial action, dispute or disturbance of any kind;
 - 21.3.3. an act of a government or a government authority;
 - 21.3.4. an act of God;
 - 21.3.5. a storm, tempest, fire, flood, earthquake or other natural calamity; or
 - 21.3.6. such other event as is outside the reasonable control of the parties.

22. General

- 22.1. We both acknowledge and agree that:
- 22.1.1. this Agreement is governed by the laws of New Zealand;
 - 22.1.2. we will both, failing any alternative dispute resolution attempts, submit to the Courts of New Zealand for resolution of any disputes;
 - 22.1.3. if any part of this Agreement is held to be deemed illegal or invalid, then that part shall be severed and the remainder of this Agreement shall remain in full force and effect; and
 - 22.1.4. if either of us does not require performance at any time of an obligation under this Agreement, we will still be able to seek to enforce that obligation if we choose.

22. General (cont.)

22.2. Any amended versions of the Terms and Conditions or fees outlined in the Application Form, will form part of this Agreement if:

- 22.3.1. we post the amended version on our secure Console;
- 22.3.2. 14 days after posting, you have not objected; and
- 22.3.3. you continue to use our Services.

22.3. Where the expression 'We may' is used in this Agreement, it means that:

- 22.3.1. we have the right referred to but no obligation to exercise the right;
- 22.3.2. the right may be exercised at our discretion;
- 22.3.3. you acknowledge and agree that we have the right; and
- 22.3.4. you authorise us to exercise the right if we choose.

22.4. Where the expression 'You may' is used in this Agreement, it means that you have the right referred to in the way described directly above.

22.5. Payrix will meet all its regulatory and compliance obligations under the requirements of the New Zealand Companies Office.

22.6. Neither our agreement to provide the Services to you, nor the supply of such services shall confer any right upon you to use any trade mark of which we are the registered holder and, at all times, such trade marks remain the property of Payrix.

23. PCI Security Standards Compliance

23.1. Payrix Limited, its operations as a Payment Service Provider (PSP) including Internet-based payment services and POS (Point of Sale) and MOTO (Mail Order/Telephone Order) Payment Processing, its Services and its Software, is Level 1 PCI DSS Compliant as assessed by Sense of Security Pty Ltd, Qualified Security Assessors. Our PCI DSS Compliance certificates are available at www.Payrix.com.au/pci-compliance/ or upon written request.

23.2. You acknowledge and understand that it is your responsibility to fulfil your own PCI Security Standards compliance requirements and that by entering into this Agreement you warrant that you are aware of your PCI Security Standards obligations and comply with all such obligations at the time of entering into this Agreement and during the term of this Agreement.

23.3. You acknowledge and understand that you may be required to undertake your own external advice and audit relating to your own PCI Security Standards compliance requirements.

23.4. You must provide Payrix, as reasonably required and in a timely manner, with:

- 23.4.1. all information and attestation to your PCI Security Standards obligations and certification;
- 23.4.2. immediate notification in the event of a PCI Security Standards compliance breach and/or if you are under investigation for non-compliance; and
- 23.4.3. annual and/or periodic documentation detailing your compliance with PCI Security Standards and remediation plans for any non-compliant processes.

23.5. You acknowledge that all costs in relation to complying with this clause 23 will be borne by you.

23.6. You warrant and accept that merely by utilising our Services are you considered to be compliant with PCI Security Standards.

24. Your Obligations to Us

24.1. You must:

- 24.1.1. adhere at all times to our standard operating procedures amended by us from time to time;
- 24.1.2. keep Customer account details, if held in an electronic form, secure in compliance with the requirements of the PCI Security Standards;
- 24.1.3. store all DDR forms in a safe and secure place for at least seven (7) years from the date of the last transaction, or until delivered to us, whichever is the sooner; and
- 24.1.4. if we require, provide financial security to us to cover the risk of us providing the Services.

24.2. You must not:

- 24.2.1. process transactions on behalf of another or unrelated business or party;
- 24.2.2. make or authorise any press release or other public statement concerning us or the Services without our prior written consent;
- 24.2.3. distribute publicity, advertising or other materials containing reference to us without our prior written consent; or
- 24.2.4. use Customer account details for any purpose other than enabling us to provide the Services.

24. Your Obligations to Us (cont.)

24.3. You must provide us with any requested information to verify that:

- 24.3.1. you are compliant with this Agreement;
- 24.3.2. you and your Directors, Proprietors and/or Guarantors are solvent; and
- 24.3.3. our records are up to date.

24.4. Information relating to clause 24.3 includes but is not limited to:

- 24.4.1. New Zealand Companies Office information;
- 24.4.2. bank statements;
- 24.4.3. drivers licences; and/or
- 24.4.4. address details.

25. Definitions

Agreement refers to the Agreement between you and us consisting of the Application Form, these Terms and Conditions, fees, the policies referred to in these Terms and Conditions and any further conditions agreed in writing by us and you from time to time.

API refers to the Payrix Web Services Application Programming Interface.

BECS Rules and Procedures means the Bulk Electronic Clearing System rules and procedures issued by the Payments NZ as far as they apply to the Services provided by Payrix.

Business Banking Day means any day on which banks are able to effect settlement through the banking system. These days are determined by public holidays which are gazetted by the New Zealand Government.

Chargeback refers to where the Cardholder, or issuing bank, raises a dispute and claim for the return of funds in connection with a transaction we made on your behalf where funds have been forwarded to you.

Claim refers to where the account holder, or issuing bank, raises a dispute for the return of funds in connection with a transaction we made on your behalf where funds have been forwarded to you.

Customer refers to a Customer of yours.

Customer Payments refers to amounts payable to you from the Customer by Direct Debit or Online Payment.

Customer Terms means the terms and conditions that your Customers must accept and agree to prior to making a payment to you by utilising the Services, if required by Payrix.

DDR means a Direct Debit Request in our required or approved format.

Direct Debit means the debiting of Customer Payments from a Customer's account at your direction and authorised by the Customer. **eDDR** means an electronic Direct Debit Request hosted on our secure PCI Security Standard compliant servers.

Failed Payment refers to a Customer Direct Debit amount which has been processed by us but not accepted or authorised by a financial institution, and not received by us.

Failed Transaction means any Direct Debit transaction undertaken by us which ultimately fails before or after it is processed by us for reasons outside of our control, and includes without limitation Chargebacks, Reversals, Failed Payments and disputed payments.

Fees refers to the charges and rates payable by you to us as described in this Agreement including in the Application Form and these Terms and Conditions.

Guarantee means the guarantee provided on the Application Form.

Guarantor means the person or persons in the 'Applicant Acceptance' section of the Application Form.

Initial Term means a length of time specified in the Terms and Conditions and commencing on either:

- the date of the first Direct Debit transaction processed by Payrix pursuant to this Agreement; or
- if no such transaction is processed by Payrix within three (3) months after this Agreement begins, the 'Date' as specified on the Application Form.

Insolvent means bankrupt, in liquidation, in administration, in receivership, subject to deed of company arrangement, subject to scheme of arrangement or otherwise unable to pay your debts as and when they fall due.

Payrix refers to Payrix Limited, Company # 3834196, the provider of the Services described in these Terms and Conditions. References to 'we', 'us', 'our' and 'ours' are usually references to Payrix, but not in cases such as 'this Agreement' or 'we both agree' where the context clearly requires otherwise.

Party means the Business or Payrix, and Parties shall mean both the Business and Payrix.

25. Definitions (cont.)

PCI Security Standards means the security standards set and governed by the Payment Card Industry Security Standards Council, including:

- Data Security Standard (PCI DSS), which applies to the storage, processing or exchange of Cardholder data;
- Payment Application Data Security Standard (PA-DSS) which apply to software applications that process Cardholder data; and
- PIN Transaction Security (PTS) requirements, which apply to the security of Cardholder data at the point of interaction, such as at an ATM or EFTPOS terminal.

Prescribed Terms means any terms, conditions, guarantees, warranties and any other expressly provided law, may not in respect of this Agreement be excluded, restricted or modified, or may be excluded restricted or modified only to a limited extent.

Reversals refers to Customer Payments from a bank account which have been received by us and forwarded by us to you, but which are subsequently reversed by a financial institution or other third party.

Service Fee means the fees payable by the Business to Payrix pursuant to the terms of this Agreement, as disclosed in the Application Form or otherwise agreed between the Business and Payrix.

Services refer to our Direct Debit Payment System, Payment Gateway, API, DDR, eDDR, Hosted Payment Page and Transparent Redirect and Service means any one of them as the context requires.

Software Partner means the provider of Business Management Software that is integrated and/or holds an Integrated Partnership Agreement with Payrix.

Term means the Initial Term or a renewal of the Initial Term by operation of clause 18, as the case may be.

Termination Date refers to the date of termination or expiry of this Agreement, in accordance with these Terms and Conditions.

You or the **Business** means the holder of the Company #, the Company, Business or Sole Trader as detailed within the completed and signed Payrix Application Form.

Direct Debit Request (DDR) Service Agreement

This Agreement is designed to explain what your obligations are when undertaking a Direct Debit arrangement with Payrix and the Business as indicated on the front of this Direct Debit Request (herein referred to as the Business). It also details what our obligations are to you as your Direct Debit Provider. We recommend you keep this Agreement in a safe place for future reference. It forms part of the terms and conditions of your Direct Debit Request (DDR) and should be read in conjunction with your DDR form.

I/We hereby authorise Payrix Australia Pty Ltd (ABN: 63 135 196 397) Direct Debit User ID 382220 to make periodic debits on behalf of the Business.

I/We acknowledge that Payrix is acting as a Direct Debit Agent for the Business and that Payrix does not provide any goods or services and has no express or implied liability in regards to the goods and services provided by the Business or the terms and conditions of any agreement with the Business.

I/We acknowledge that Payrix and the Business will keep any information, including account details, contained in the Direct Debit Request confidential. Payrix and the Business will make reasonable efforts to keep any such information that we have about the Customer secure and to ensure that any of our employees or agents who have access to information about you do not make any unauthorised use, modification, reproduction or disclosure of that information.

We will only disclose information that we have about you:

- (a) to the extent specifically required by law; or
- (b) for the purposes of this agreement, including disclosing information in connection with any query or claim.

I/We acknowledge that the debit amount will be debited from my/our account according to the Direct Debit Request, this Agreement and the terms and conditions of the agreement with the Business.

I/We acknowledge that bank account details have been verified against a recent bank statement to ensure accuracy of the details provided. If uncertain, you should contact your financial institution.

I/We acknowledge that it is my/our responsibility to ensure that there is sufficient cleared funds in the nominated account by the due date to enable the Direct Debit to be honoured on the debit date. Direct Debits normally occur overnight, however transactions can take up to three (3) business days depending on the financial institution. I/We acknowledge and agree that sufficient funds will remain in the nominated account until the Direct Debit amount has been debited from the account and that if there are insufficient funds available, I/We agree that Payrix will not be held responsible for any fees and charges that may be charged by my/our financial institution.

I/We acknowledge that there may be a delay in processing if:

- 1) there is a public or bank holiday on the day, or any day after the debit date;
- 2) a payment request is received by Payrix on a day that is not a Banking Business Day;
- 3) a payment request is received after normal operational hours, being 4pm Monday to Friday;

Any payments that fall due on any of the above will be processed on the next business day.

I/We authorise the Business to vary the amount of the payments from time to time as provided for within the Business Agreement. I/We authorise Payrix to vary the amount of the payments upon instructions from the Business. I/We do not require Payrix to notify me/us of such variations to the debit amount.

I/We acknowledge that an additional fee of 1.10% will apply to international card payments.

I/We acknowledge that the total amount billed will be for the specified period for this and/or subsequent Agreements and/or amendments. I/We acknowledge that the Business is to provide 14 days notice if proposing to vary the terms of the debit arrangements.

I/We acknowledge that variations to the debit arrangement will be directed to the Business.

I/We acknowledge that any request to stop or cancel the debit arrangement will be directed to the Business.

I/We acknowledge that any disputed debit payments will be directed to the Business. If no resolution is forthcoming, you are advised to contact your financial institution.

I/We acknowledge that if a debit is returned by my/our financial institution as unpaid, I/We will be responsible for any fees and charges for each unsuccessful debit in addition to any financial institution charges and collection fees, including and not limited to any solicitor fees and collection agent fees appointed by Payrix.

I/We authorise Payrix to attempt to re-process any unsuccessful payments as advised by the Business.

I/We acknowledge that setup, variation, dishonour, SMS, transaction or processing fees may apply. I/We authorise:

- 1) Payrix (Debit User ID 382220) to verify details of my/our account with my/our financial institution
- 2) My/Our financial institution to release information allowing Payrix to verify my/our account details.

ABN: 63 135 196 397

Australian Financial Services Licence No. 418105

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