

# SWIPECARD LIMITED MERCHANT TERMS & CONDITIONS

## SECTION 1: INTERPRETATION

### 1.1 Definitions

In this Agreement, unless inconsistent with the context, the following terms shall bear the following meanings:

**"Activity Limit"** means, in respect of a SWIPECARD LTD Gift Card and or Loyalty Card (i) an activity value limit for the category of either a Gift Swipecard and or Loyalty Swipecard to which that Card belongs; and (ii) such other transaction or activity limit relating to a particular category of Gift Swipecard and or Loyalty Swipecard or an individual Card, Gift Card and or Loyalty Card or Cardholder, as may be agreed between SWIPECARD LTD and the Merchant pursuant to clause 2.4;

**"this Agreement"** includes the recitals and schedules and means this Agreement as the same may be varied from time to time by written agreement between the Parties;

**"Authorisation"** means: (i) in respect of a Gift Swipecard Transaction and or Loyalty Swipecard Transaction which falls within either of the categories stated in (i) or (ii) of the definition of that term; and (ii) in respect of each other category of Transaction, the authorisation or verification of that Transaction in accordance with procedures from time to time agreed in writing between the Parties, and an "Authorised Transaction" shall be construed accordingly;

**"Banking Day"** means a day, other than a Saturday, Sunday or public holiday, when NZ registered banks are open for retail banking business.

**"Cardholder"** means a person to whom has received a SWIPECARD LTD Card, where a Transaction is the subject of an Authorisation, includes the person who has presented the relevant Card for that Transaction (where that person may be different from the person to whom the Card was issued);

**"Cardholder's Assigned Account"** means, in respect of a Transaction effected using an SWIPECARD LTD Gift Swipecard and or Loyalty Swipecard, the assigned account of the relevant Cardholder which is maintained by SWIPECARD LTD and to which is debited the value of all Transactions effected by that Cardholder using an SWIPECARD LTD Gift Swipecard and or Loyalty Swipecard;

the **"Code"** means the Code of Banking Practice issued by the New Zealand Bankers' Association in December 2002, as the same may be amended from time to time and includes any like code in substitution for that code;

**"Communications Channels"** means the telecommunications networks approved by SWIPECARD LTD from time to time for linking Terminals through to SWIPECARD LTD's Host Computer & processing centres from which Transaction Authorisations and (where relevant) PIN verifications are provided by or on behalf of SWIPECARD LTD;

**"Gift Swipecard"** or **"Loyalty Swipecard"** or **"Loyalty Card"** or **"Card"** means either a Gift Card or a Loyalty Card;

**"Swipe Gift Card"** or **"Gift Swipe Card"** or **"Gift Card"** means a plastic gift card issued by SWIPECARD LTD and which (i) entitles the Cardholder, upon and subject to the terms and conditions of use of that card, to (among other things) debit from the Cardholder's Assigned Account, a value for the cost of goods or services acquired from a Merchant by use of that Card in an Authorised Transaction and (ii) has been approved by SWIPECARD LTD for use in the System;

**"Swipe Loyalty Card"** or **"Loyalty Swipecard"** or **"Loyalty Card"** means a plastic loyalty card issued by SWIPECARD LTD and which (i) entitles the Cardholder, upon and subject to the terms and conditions of use of that card, to collect and accrue loyalty points or Cash Back or other rewards in connection with the purchase of goods or services from certain Merchants, and (ii) has been approved by SWIPECARD LTD for use in the System;

**"the Swipecard Host Computer"** means the computer data storage system designated from time to time by SWIPECARD LTD (whether actually operated by SWIPECARD LTD or by another person or company or agent) which records information relating to the use of a SWIPECARD LTD Card;

**"Swipecard Transaction"** or **"Transaction"** means a Gift Card Transaction or a Loyalty Card Transaction.

**"Declined"** means that when a Transaction Authorisation is sought in respect of a Transaction by the use of a Terminal and a Card, the Terminal response indicates that no Authorisation has been granted in respect of that Transaction;

## 1.1 Definitions - continued

“**Swipecard Limited Agent or Agent**” means, in respect of a Transaction which has been effected using an SWIPECARD LTD Card, the bank or other entity which acts as the agent of SWIPECARD LTD to service the EFTPOS relationship between SWIPECARD LTD and the Merchant which is a party to the relevant Transaction;

“**Swipecard Limited Merchant Service Agreement**” means, in respect of a Transaction effected using an SWIPECARD LTD Card, the agreement existing between SWIPECARD LTD, the relevant SWIPECARD LTD Agent and the relevant merchant, including the terms and conditions to provide services for the merchant to effect that Transaction by accepting the relevant SWIPECARD LTD Card;

“**Gift Card Transaction**” and “**Gift Transaction**” means:

- (i) a transaction for the sale and purchase of goods or services between a Merchant, as vendor, and a Cardholder, as purchaser, where payment for such goods or services is attempted or effected by or on behalf of that Cardholder by virtue of the presentation to that Merchant of an SWIPECARD LTD Gift Swipecard and the authorisation by SWIPECARD LTD of that payment is attempted to be effected following insertion or swipe of that Card in a Terminal at that Merchant's premises; or
- (ii) such other categories of transactions as may be agreed in writing from time to time by the Parties as constituting categories of transactions which can be effected using the relevant categories of SWIPECARD LTD Gift Cards and to which this Agreement is to apply;

“**Loyalty Card Transaction**” and “**Loyalty Transaction**” means:

- (i) a transaction for the recording and collection of loyalty points or Cashback or other rewards between "the Merchant and the Cardholder, effected by virtue of the insertion or swipe of the Cardholder's Loyalty Card in a Terminal at a Merchant's premises, such Loyalty Transaction being associated with a sale and purchase transaction between the Cardholder and the relevant Merchant; and
- (ii) such other categories of transactions as may be agreed in writing from time to time by the Parties as constituting categories of transactions which can be effected using the relevant categories of SWIPECARD LTD Cards and to which this Agreement is to apply;

“**Merchant**” means a retailer or other person which provides goods and/or services to customers and which is a party to a subsisting the Swipecard Limited Merchant Agreement pursuant to which such retailer or other person is authorised to effect Transactions by accepting a relevant SWIPECARD LTD card category of plastic card for use in the System;

“**Merchant Help Desk**” means the national help desk service from time to time in use by ETSL for the purposes of responding to Merchant enquiries relating to the Eftpos System, maintaining network servicing files and monitoring network performance;

“**Parties**” means SWIPECARD LTD and "the Merchant" and “**Party**” shall be construed accordingly;

“**Service**” means the electronic funds transfer or payment authorisation, data capture and delivery and/or settlement of gift card or loyalty card transactions via a platform provided by swipecard limited;

“**System**” means the electronic point of sale delivery system in New Zealand operated by Paymark to facilitate electronic payment authorisation, at point of sale, which delivers the Loyalty or Gift service provided by SWIPECARD LTD;

“**Terminal**” means an electronic funds transfer device, including such a device and EFTPOS software integrated into an electronic cash register or electronically operated goods dispensing equipment which is installed at a Merchant's premises and connected with the System and which has been approved by Paymark for use in effecting EFTPOS Transactions through the System.

## **1.2 General Interpretation**

In this Agreement:

1.2.1 unless otherwise stated, a reference to a Section or to a Clause or a Schedule is a reference to a Section of, or a clause in, or a Schedule to, this Agreement;

1.2.2 words in the plural include the singular and vice versa;

1.2.3 Section and clause headings are inserted for convenience only and shall be ignored in construing this Agreement;

1.2.4 expressions referring to writing shall be construed as including references to words printed, type-written, or produced by facsimile or by electronic media or otherwise traced, copied or reproduced.

## **1.3 Governing Law**

This Agreement shall be construed and take effect in accordance with, and any dispute between the Parties shall be governed by, the laws of New Zealand.

## **SECTION 2: AUTHORISATION AND SETTLEMENT OF TRANSACTIONS**

### **2.1 Approval of Cards**

For the purposes of this Agreement, the following categories of cards issued by SWIPECARD LTD shall constitute cards which have been approved by SWIPECARD LTD for use in the System:

2.1.1 the categories of cards identified by ; and

2.1.2 such other categories of cards issued by SWIPECARD LTD and which may be agreed in writing between the Merchant and SWIPECARD LTD as being approved for the purposes of this Agreement and in respect of which authorisation parameters have been advised to, and accepted by, SWIPECARD LTD pursuant to clause 2.4. Notwithstanding the foregoing, the Merchant acknowledges that "approved" designation shall only be attained under this Agreement for Cards in respect of which the Merchant will use under licence from SWIPECARD LTD.

### **2.2 Access to System**

Subject to the Merchant observing and performing those covenants and provisions contained in this Agreement which the Merchant is obliged to observe and perform and subject also to the other terms and conditions of this Agreement, SWIPECARD LTD will instruct all Merchants that, during the term of this Agreement, all Cards activated by SWIPECARD LTD are eligible for use in respect of EFTPOS Transactions effected through the System. SWIPECARD LTD shall not be liable to the Merchant, to the relevant Cardholder or to any other person should a Merchant decline to effect such a Transaction.

### **2.3 Preservation of Integrity of System**

The Merchant acknowledges to SWIPECARD LTD that it has confidence that their reasonable expectations to effect Transactions through the System will be met. Accordingly:

2.3.1 SWIPECARD LTD will use its best endeavours to ensure that its procedures and systems for the issue and replacement of Cards are properly implemented and maintained so that a Cardholder who has complied with the terms and conditions of issue and use of the relevant Card will be able to effect Transactions using that Card;

2.3.2 all relevant Activity Limits shall be notified to the relevant Merchants;

2.3.3 the integrity of the overall customer data base for all platforms operated by SWIPECARD LTD will be maintained so that a cardholder or merchant can access this data at all times.

### **2.4 Authorisation Procedures and Parameters**

SWIPECARD LTD will issue cards to each merchant. Only SWIPECARD LTD approved Cards will be accepted for use in the System,

2.4.3 the Merchant shall follow all procedures and parameters for the granting of Authorisations in respect of Transactions;

2.4.4 the image of the Cards; and such information and procedures must be acceptable to SWIPECARD LTD. No change to the information or the procedures so advised and accepted (including the Activity Limits and Authorisation procedures and parameters) shall be effective unless such change, and the time for the implementation of such change, are agreed in writing between SWIPECARD LTD and the Merchant. The Authorisation procedures and parameters for the Merchant are set out in Parts A and B of the Second Schedule and shall be deemed to have been accepted by the Merchant and agreed between the Parties pursuant to this clause. SWIPECARD LTD shall observe all Authorisation procedures and parameters agreed pursuant to this clause.

## **2.5 Authorisations**

For the purposes of this Agreement:

2.5.1 a Card Transaction shall have been authorised if the Transaction has been completed through the System and instigated by the use of a SWIPECARD LTD Card and, the Card has been verified by physical presentation of the card and verified through the System by reference to the SWIPECARD LTD Host Computer (as determined by Part A of the Second Schedule) and the System having responded with a signal that the Transaction has been "ACCEPTED", (i) in respect of individually PINNed Cards, the identity of the relevant Cardholder has been verified by means of the PIN tendered by the relevant Cardholder being correctly entered into the Terminal and verified either within the System or by reference to the SWIPECARD LTD Host Computer (as determined by Part A of the Second Schedule) and the System having responded with a signal that the Transaction has been "ACCEPTED"; and (ii) the Transaction falls within any relevant Activity Limit; and (iii) the Terminal has printed the details of the: (a) type and amount of the Transaction; (b) date of the Transaction; (c) time of the Transaction; (d) Terminal Transaction record number; and (iv) the Terminal has indicated that the Transaction has been accepted by the System and such acceptance has been recorded on the relevant printed Transaction record.; 2.5.1 a Card Transaction shall have been authorised if the Transaction has been completed through the System and instigated by the use of an SWIPECARD LTD Card and: 2.5.1.1 the Terminal has printed the details of the: (i) Merchant's name and the identification number ascribed to that Merchant by Paymark; (ii) abbreviated number of the relevant Card; (iii) Value amount of the Transaction; (iv) date of the Transaction; (v) time of the Transaction; and (vi) terminal Transaction record number; and 2.5.1.2 The Terminal has indicated that the Transaction has been accepted.

## **2.6 Data Capture and Delivery**

Summarised daily Transaction and Authorisation data containing each Transaction log file record for each Authorised Transaction generated by SWIPECARD LTD Cards will be recorded by the System and shall be delivered to the SWIPECARD LTD card platform reporting system. Unless otherwise agreed in writing between the Parties, the provisions of Part A of the Second Schedule shall apply in respect of the capture and delivery of data pursuant to this clause.

## **2.7 Swipecard limited is not Responsible for Merchant Settlement**

It is acknowledged by the Parties that SWIPECARD LTD shall not be involved in, nor shall it have any liability in respect of, the settlement with Merchants of Transactions effected using SWIPECARD LTD Gift and or Loyalty Cards. Settlement must be done by each merchant at the end of each business trading day by way of the terminal settlement function.

## **2.8 No Reversal or Dishonour of Authorised Card Transactions**

SWIPECARD LTD acknowledges that the integrity of the System depends on Merchants being assured that Authorised Transactions effected using a Gift and or Loyalty Card via a SWIPECARD LTD hosted card platform and SWIPECARD LTD managed transactional account will not be reversed if the appropriate authorisation procedures are observed by the Merchant. 2.8.1 SWIPECARD LTD acknowledges that if a merchant hosts and controls their own card platform, the Merchant may enter into separate agreements with Cardholders in relation to the specific authorisation, reversal or charge-back of a Gift or Loyalty Card Transaction. 2.8.2 The Merchant agrees that it will be solely liable for all transactions which are effected via the system if the merchant chooses to run their own loyalty or gift card platform. The Merchant will control the bank account to which loyalty or giftcard funds belonging to the cardholder are maintained and held and the Merchant will be solely liable for all funds held that belong to merchant's cardholders.

# **SECTION 3: OTHER OPERATING AND RELATED MATTERS**

## **3.1 Establishment of Host Computer Links**

The Merchant shall meet the cost of maintaining an active phone line to allow an Eftpos connection and transactions

## **3.2 Merchant Procedures. Swipecard Loyalty Cards, Cashback Cards and Giftcards**

The Merchant shall ensure that, once a Cardholder has swiped a Loyalty Card through the Terminal, the Merchant shall seek payment from the Cardholder for the relevant purchase as a separate and distinct transaction from the Loyalty Transaction and shall not accept presentation of the Loyalty Card as electronic payment for the associated purchase of goods or services.

The Merchant shall ensure that, once a Cardholder has swiped a SWIPECARD LTD Cashback Card through the Terminal, the Merchant shall seek payment from the Cardholder for the relevant purchase. Payment can be as a separate and distinct transaction from the Loyalty Transaction or the card holder can redeem rewards to pay for the relevant purchase. Either transaction will be accepted once the transaction is approved and accepted by the system.

The Merchant shall ensure that, on presentation of a SWIPECARD LTD Gift Card as electronic payment for the associated purchase of goods or services, the merchant shall accept this payment only if a Cardholder has swiped the Gift Card through the Terminal, and the transaction is approved and accepted.

### **3.3 Availability of Service**

Subject to clause 5.1, SWIPECARD LTD shall use its best endeavours to make available on a 24 hours per day basis that part of the Service which SWIPECARD LTD has agreed to make available to the Merchant pursuant to this Agreement PROVIDED THAT SWIPECARD LTD shall not be obliged to make such part of the Service available to the Merchant at any time when SWIPECARD LTD is required to attend to scheduled or urgent equipment or software maintenance. SWIPECARD LTD will provide to the Merchant timely notification of any proposed scheduled maintenance to the System and will use all reasonable endeavours to ensure that there are no more than 4 x 2 hour maintenance outages to the System per annum and to minimise the requirement for such maintenance to be carried out at peak Transaction volume times during the day.

### **3.4 Records and Inspection**

SWIPECARD LTD shall retain computer records of all Transactions effected through the System using SWIPECARD LTD Gift and loyalty Cards for a period of not less than twelve (12) months from the date on which the relevant Transaction took place. SWIPECARD LTD shall make available to the Merchant extracts from these computer records upon request, and upon payment of reasonable fees, if any.

### **3.5 System Security**

The Merchant shall ensure that it adheres to all relevant guidelines and standards from time to time reasonably laid down or identified by SWIPECARD LTD with regard to the technical and security aspects of the System and the Service.

### **3.6 Literature**

For the purposes of promoting the use of EFTPOS, The Merchant shall be entitled to include reference to the Service in its literature and promotions to Cardholders and/or other Merchants, subject to SWIPECARD LTD first having given its written approval to such reference.

## **SECTION 4: FEES AND CHARGES**

### **4.1 Entry Fee**

Forthwith after the Merchant has executed this Agreement, the Merchant shall pay to SWIPECARD LTD an entry fee in the amount set out in Part B of the First Schedule. The Merchant shall also pay to SWIPECARD LTD an additional fee for the implementation of any new ISO numbers in accordance with SWIPECARD LTD's standard charges as determined by Paymark from time to time, upon receipt of a valid GST invoice. An ISO number is required if the merchant is requiring to run an independant platform and its own loyalty or giftcard

### **4.2 Transaction Fees**

The Merchant shall pay to SWIPECARD LTD in respect of each Transaction which is Authorised or Declined and which is effected or attempted using a SWIPECARD LTD Card, a transaction fee calculated in accordance with SWIPECARD LTD's standard Schedule of Charges, as determined by SWIPECARD LTD from time to time. The current transaction fees, as at the date of this Agreement, are set out in Part C of the First Schedule.

### **4.3 Invoices**

Transaction fees will be invoiced monthly. All transaction fees shall be paid to SWIPECARD LTD no later than the 14th day in the month following the month in respect of which all transactions were effected. All due amounts will be Direct Debited via a secure 3rd party banking provider. Invoices will be emailed to all merchants notifying the amount due.

### **4.4 Other Charges**

The Parties agree that:

4.4.1 Direct Debit fees shall apply in relation to charges by the 3rd party banking provider for electronic funds transfer.;

4.4.2 Eftpos fees may increase over advertising and promotional periods. These fees will be capped at \$1 which will include the standard 50c eftpos transactional fee. The increase will be charged at CPA being the share of business we send you during this promotional period. As soon as the promotional cost has been reached the eftpos fee will return to the standard 50c even if the promotional period is still running. The additional 50c promotional and advertising fee will only be charged if the promotional campaign requires additional funding.

4.4.3 Cashback issued on behalf of the Merchant will be direct debited from the Merchant's nominated account, and Cashback redeemed by the Merchant from Cardholders will be credited to the Merchants nominated deposit account.

4.4.4 Cashback Debits or Credits to or from the Merchant via our third party banking provider will occur when a merchant has redeemed or issued Swipecard Dollars totaling \$1000. Balances under \$1000 will be processed every 7 days.

### **4.5 GST**

All fees and charges set out or referred to in this Agreement (including any fees which are varied pursuant to clause 4.6), are stated before the calculation of goods and services tax which shall, if required by law, be paid on all such fees and charges.

#### **4.6 Schedule of Charges**

The transaction fee set out in Part C of the First Schedule is the current transaction fee calculated in accordance with SWIPECARD LTD's Standard Schedule of Charges in force as at the date of this Agreement. SWIPECARD LTD shall be entitled to vary the fee stated therein at any time as per clause 4.4.2 and SWIPECARD LTD shall notify the merchant of any other such variation not less than two (2) weeks before such variation takes effect. A increase in the standard eftpos transaction fee will only occur if eftpos transaction fees are increased by paymark.

### **SECTION 5: LIABILITY OF SWIPECARD LIMITED**

#### **5.1 Force Majeure**

SWIPECARD LTD shall not be under any liability to provide access to the System for card useage or to provide the Merchant with any part of the Service or to provide technical advice or monitoring services pursuant to clause 3.1, if SWIPECARD LTD is prevented from doing so by equipment or telecommunications failure, breakdown or malfunction or by industrial disruption (including strikes and lockouts), fire, flood, earthquake, or civil commotion, riot, war, Act of God, or any other cause beyond the control of SWIPECARD LTD.

#### **5.2 Authorisations**

The Merchant acknowledges that the extent of SWIPECARD LTD's obligation under this Agreement is to provide and make available to the Merchant that part of the Service which SWIPECARD LTD has agreed to provide to the Merchant under this Agreement, upon and subject to the terms and conditions set out in this Agreement. The validity and acceptance of any Authorisation obtained through the System is a matter as between the relevant Merchant and/or the relevant Cardholder. SWIPECARD LTD shall only be liable in respect of an erroneous Authorisation where it is established that SWIPECARD LTD has wilfully or negligently failed to observe the authorisation procedures and parameters agreed between the Parties pursuant to clause 2.4. In no circumstances shall SWIPECARD LTD be liable in respect of a Declined Transaction.

#### **5.3 General Limitation of Liability**

Except as the same may be occasioned by the negligence of or by the wilful act, omission or default (whether amounting to an offence or otherwise) of SWIPECARD LTD or its employees, servants or agents, SWIPECARD LTD shall be under no liability or responsibility whatever to the Merchant for or on account of mispostings, incorrect recording or other errors in the processing or recording of data received for the purposes of this Agreement from Merchants in any form or on account of any loss of documents or data, unauthorised disclosure, delays, mis-applications, failure to provide information or failure in telecommunication facilities. This clause 5.3 shall not limit, nor be limited by, clause 5.2.

#### **5.4 No Liability for Consequential Loss or Damage**

If SWIPECARD LTD is liable to the Merchant for a breach of this Agreement (including, without limiting the generality of the foregoing, in circumstances where SWIPECARD LTD permits an erroneous Authorisation or causes a failure, malfunction or breakdown of the Service or the System), SWIPECARD LTD shall not in any circumstances be liable to the Merchant for any loss of business or profits suffered by the Merchant or for any other consequential or indirect loss or damage suffered by the Merchant.

#### **5.5 Indemnity of the Merchant.**

The Merchant shall indemnify SWIPECARD LTD and each SWIPECARD LTD Agent from and against all suits, proceedings, claims, demands, liabilities, losses, costs and expenses which may be made of, or suffered or incurred by, SWIPECARD LTD or by a SWIPECARD LTD Agent which result, directly or indirectly, from:

5.5.1 a breach by the Merchant of any obligation which it may have to a Cardholder or to another Merchant;

5.5.2 any claim or allegation by or on behalf of a Cardholder or another Merchant that, or to the effect that, a Transaction effected or attempted with a SWIPECARD LTD Card has not been Authorised or Declined or has not been effected or attempted in accordance with the terms and conditions of issue and use of that Card;

5.5.3 any claim made or taken by the Merchant against Telecom New Zealand Limited or any of its related companies in relation to the network service provided by or on behalf of those entities for SWIPECARD LTD.

### **SECTION 6: SUSPENSION AND TERMINATION**

#### **6.1 Duration of Agreement**

This Agreement shall commence on the date hereof and shall remain in full force and effect for the period stated within this agreement until terminated by either Party giving to the other not less than six (6) months' written notice of its desire to terminate this Agreement. If SWIPECARD LTD varies any of the fees and charges pursuant to clause 4.6, then the Merchant may, by giving written notice to SWIPECARD LTD, terminate this Agreement with effect on and from a date falling not less than three (3) months from the date of receipt by the Merchant issuing such notice. All fees must be paid in full for the remaining period term stated within this agreement.

## **6.2 Termination for Breach**

Notwithstanding clause 5.1, if either Party (“the defaulting Party”) shall be in default in the observance or performance of a covenant or agreement contained in this Agreement and which is required to be observed or performed by the defaulting Party, then the other Party (“the nondefaulting Party”) shall be entitled to give notice to the defaulting Party specifying the default that has occurred and:

6.2.1 if such default is capable of being remedied, then such default shall be remedied within one (1) calendar month of the date of such notice. If such default is not remedied within such period of one (1) calendar month, then the non-defaulting Party shall be entitled to terminate this Agreement by written notice to the defaulting Party given at any time within the period of two (2) calendar months after the expiry of such period of one (1) calendar month; and

6.2.2 if such default is not capable of remedy then the non-defaulting Party shall be entitled (in the notice specifying the relevant default) to terminate this Agreement with effect from a date being no earlier than one (1) calendar month after the date of service of such notice.

## **6.3 Pre-existing Liabilities**

If this Agreement is terminated pursuant to clause 6.1 or clause 6.2 (including the proviso to clause 6.2), the respective liabilities of the Parties which were accrued or incurred prior to the date on which the termination takes effect shall continue and shall not be affected in any way. The entry fee if waived will become payable if termination is effected within the two year licence period of this agreement.

## **6.4 Suspension by Swipecard Limited**

Where SWIPECARD LTD or a SWIPECARD LTD Agent considers, on reasonable grounds, that serious circumstances exist and that the principles of prudential banking so require, SWIPECARD LTD may, at any time and without prior notice to the Merchant, suspend the availability of the Service to the Merchant in respect of all or some Cards for such period or periods as SWIPECARD LTD shall consider appropriate. SWIPECARD LTD shall use its best endeavours to advise the Merchant by facsimile transmission prior to any such suspension and in the event that no such advice is given then written notice of suspension shall be given immediately after such suspension taking effect.

## **6.5 Suspension by the Merchant**

The Merchant may, at any time, give notice to SWIPECARD LTD in writing requesting SWIPECARD LTD to suspend access to the System for any one or more categories of Card and SWIPECARD LTD shall implement such suspension as soon as is reasonably practicable PROVIDED THAT nothing in this clause shall derogate from clause 6.1. Nothing in this clause shall limit, or be limited by, clause 3.3.

## **SECTION 7: MISCELLANEOUS**

### **7.1 Confidentiality**

Each of the Parties acknowledges and agrees that:

7.1.1 in anticipation of or during the term of this Agreement, it may have acquired or may acquire information in relation to the business, operating procedures or customers of the other Party which is not public knowledge (all such information being called “Confidential Information”);

7.1.2 each Party shall be permitted to disclose Confidential Information to its employees, consultants and contractors to the extent necessary for the purposes of performing its obligations under this Agreement, provided that such Party takes all reasonable steps to ensure that such Confidential Information is not disclosed or used other than for the purposes of carrying out the provisions of this Agreement;

7.1.3 except as provided in clause 7.1.2, each of the Parties shall:

- (i) treat the Confidential Information as the property of the relevant owner;
- (ii) not disclose the Confidential Information to any third party;
- (iii) not in any circumstances use the Confidential Information for its own purposes or benefit;

7.1.4 the provisions of this clause 7.1 shall not apply to any information which is:

- (i) within the public domain;
  - (ii) actually and demonstrably known by the Party prior to acquisition by it in anticipation of or during the term of this Agreement;
  - (iii) obtained or acquired in good faith, and not accompanied by an obligation of confidentiality, from a third party who has received such information in good faith and not under any obligation of confidentiality to either of the Parties in relation to that information; or
  - (iv) required to be disclosed pursuant to any law or any order of any Court or governmental agency;
- 7.1.5 the provisions of this clause 7.1 shall survive the termination of this Agreement.

## **7.2 Notices**

Any notice which a Party is required or intends to give to the other Party concerning any matter or thing relating to this Agreement shall be in writing. Notices to a Party shall be delivered to the designated address of the Party to whom the notice is to be given or shall be delivered or sent by pre-paid registered mail (which mailed notice shall be mailed from an address within New Zealand) or by facsimile message to the relevant Party at that address. Any such notice shall be deemed to have been given:

7.2.1 on the day of delivery where the notice is delivered during business hours on a Banking Day;

7.2.2 on the following Banking Day where the notice is delivered after the end of business hours;

7.2.3 on the day of despatch where a facsimile message is despatched during business hours on a Banking Day;

7.2.4 on the following Banking Day where a facsimile message is despatched after the end of business hours or on a day that is not a Banking Day;

7.2.5 two (2) clear Banking Days after the day of posting where the notice is sent by pre-paid registered mail to an address within New Zealand.

## **7.3 Designated Addresses**

A designated address for the purpose of this Agreement shall be that specifically designated in this clause 7.3 or such other address as shall be specifically designated by a Party by notice given to the other Party in substitution therefor.

The addresses designated to this clause 7.3 are:

### **Swipecard Limited**

12 Manor Place

Bryndwr

Christchurch

Attention: CEO

## **7.4 Waiver**

Any time or indulgence given by one Party to the other, or any failure, delay or neglect by one Party in the exercise of its rights under this Agreement, shall not be construed as a waiver of that Party's rights or remedies or prejudice that Party's ability to exercise such rights or remedies at a subsequent time.

## **7.5 Disputes Between the Merchant and Others**

Any dispute between, on the one hand, The Merchant and, on the other hand, a Cardholder or another Merchant shall be entirely between the Merchant and that other person and the Merchant shall not involve SWIPECARD LTD in any such dispute unless the Merchant otherwise requests it in writing. If SWIPECARD LTD is involved in a dispute, then SWIPECARD LTD may use its best endeavours to arrange for a relevant SWIPECARD LTD Agent to liaise with that party and the relevant Merchant in an endeavour to resolve that dispute.

## **7.6 No Warranty by Swipecard Limited**

The Merchant acknowledges that:

7.6.1 The Merchant has entered into this Agreement solely in reliance on its own judgment and, save as is expressly stated herein, SWIPECARD LTD has not made or given any express or implied warranty or representation in relation to the operation or performance of the System or in relation to the provision of the Service;

7.6.2 (without limiting clause 7.6.1) no warranty or representation concerning the integrity of a Merchant may be inferred from the fact that Paymark has entered into a Merchant Agreement with that Merchant or has otherwise agreed to provide the Service to that Merchant.

## **7.7 No Warranty by the Merchant**

The Merchant shall not make any warranty or representation purportedly on behalf of SWIPECARD LTD in relation to the System or the Service.

## **7.8 No Exclusivity**

Nothing in this Agreement confers on the Merchant any exclusivity in respect of the Service.

## **7.9 Code**

The Merchant at all times shall observe and perform the requirements of the Code where relevant.

### **7.10 Contracts (Privity) Act**

The covenants and promises of the Merchant contained in each of clauses 5.5 are intended to confer a benefit on SWIPECARD LTD and each Agent. Accordingly, by virtue of section 4 of the Contracts (Privity) Act 1982, The Merchant shall be under an obligation, enforceable at the suit not only of SWIPECARD LTD but also of each SWIPECARD LTD Agent, whether by way of defence or otherwise, to observe and perform each of those covenants and promises

### **7.11 Amendments**

Any amendment to this Agreement shall be in writing duly executed by each of the Parties in the same manner and with the same formality as this Agreement is executed.

### **7.12 Assignment**

The Merchant shall not be entitled to transfer or assign its rights or obligations under this Agreement without the prior written consent of SWIPECARD LTD, and then only upon and subject to such conditions (if any) as may be attached to such consent. SWIPECARD LTD shall be entitled to assign its rights and obligations under this Agreement without the prior written consent of the Merchant, provided the assignee has the technical and financial ability to perform under this Agreement. SWIPECARD LTD shall give written notice to the Merchant of any proposed transfer or assignment of its rights or obligations under this Agreement.

### **7.13 Arbitration**

If at any time a dispute shall arise between the Parties touching or concerning the construction, meaning or effect of this Agreement or the rights or liabilities of the Parties under or in relation to the Agreement, that dispute shall be referred to arbitration in New Zealand in accordance with the following provisions of this clause 7.13:

7.13.1 the arbitration shall be conducted in accordance with New Zealand law, and the provisions of the Arbitration Act 1996 shall apply except insofar as they are expressly excluded or modified by this clause 7.13;

7.13.2 the reference shall be to a single arbitrator appointed in accordance with clause 7.13.3 or, if no such appointment is made, then to two arbitrators appointed in accordance with clause 7.13.4;

7.13.3 where a dispute has arisen which is required to be submitted to arbitration, either Party may give notice to the other Party to concur in the appointment of a named arbitrator, or one of several persons named as possible arbitrators in that notice, within fourteen (14) days of that notice being given. If within that period of fourteen (14) days the Party to whom the notice was given gives notice to the other Party concurring in the appointment of the person, or one of the persons, named in the first notice, then that person shall be the arbitrator and shall forthwith enter upon the reference;s.

7.13.4 where a notice has been given under clause 7.13.3, but no appointment of a single arbitrator has been made before the expiry of the fourteen (14) day period referred to in clause 7.13.3, the reference shall be to two arbitrators, one to be appointed by each Party, or in the case of disagreement between such arbitrators, to their umpire. The umpire shall be appointed by the arbitrators immediately after they are appointed.

### **7.14 Entirety of Agreement**

These Terms and Conditions, the Platform Licence Application and Merchant Services Agreement, including the First Schedule, Second Schedule, and Sections two, three, four and five constitutes the entire agreement between the Parties as per the date on the Agreement.

The Merchant upon the signing of the agreement will in addition sign each page of the entire agreement including the terms and conditions in the bottom right hand corner to confirm they have read and understood in full the terms and conditions of the agreement.

The Merchant agrees to the Code of Banking Practice. The purpose of the Code is to record and communicate to the public the minimum standards of good banking practice and to observe and maintain good relationships and communication with customers.

The Merchant agrees to the **FIRST SCHEDULE; Part B and Part C, being the full pricing requirements to activate the selected Platform indicated on the Platform Licence Agreement.**

The Merchant understands in full the **AUTHORISATION PROCEDURES AND PARAMETERS AND OTHER OPERATING MATTERS** as detailed.

By signing the "*duly authorised signatory areas*" found on the final page of the Platform Licence Application you fully agree to these Merchant Terms and Conditions herein.

## **DOCUMENT INDEX**

### **PLATFORM LICENCE APPLICATION FORM**

### **MERCHANT SERVICES AGREEMENT**

**FIRST SCHEDULE, SECOND SCHEDULE** (Sections 2,3,4) and (5 being any special amendments if any)

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