



# Windcave

## MERCHANT SERVICES FACILITY AGREEMENT

**Version 0.1**

**Copyright**

---

© Copyright 2020, Windcave New Zealand Limited  
33 Wilkinson Road  
Ellerslie  
Auckland, 1060  
New Zealand  
[www.windcave.com](http://www.windcave.com)

All rights are reserved. No part of this work may be reproduced or copied in any form or by any means, electronic or mechanical, including photocopying, without the express written permission of Windcave Limited.

**Proprietary Notice**

---

The information described in this document is proprietary and confidential to Windcave. Any unauthorised use of this material is expressly prohibited except as authorised by Windcave Limited in writing.

## Merchant Services Facility Agreement Signature Section

By completing and signing this signature section, you, the merchant, are applying to receive the merchant services detailed in this document (including in Parts A to F) from us, Windcave New Zealand Limited ("Windcave") on the terms set out in the attached Merchant Services Facility Agreement ("Terms"). If we agree to provide the services (by signing this signature section), this document (including in Parts A to F) and the Terms will apply and govern the provision of the relevant services. For the avoidance of doubt, "Agreement" means all of the documents listed in clauses 1.1 and 1.3 of the Terms.

### A: BUSINESS DETAILS

Please tick appropriate business type & complete details in full to avoid delays in processing

Legal Name:								
Merchant Trading Name : (22 characters only)								
Postal Address:								
Site Address								
Site Phone Number:				Fax number:				
Website:				Business Email Address:				
Type of Business:	<input type="checkbox"/> Sole Trader		<input type="checkbox"/> Partnership/Joint Venture		<input type="checkbox"/> Company (private/public)		<input type="checkbox"/> Statutory Body	
	<input type="checkbox"/> Government Body		<input type="checkbox"/> Incorporated/Registered		<input type="checkbox"/> Unincorporated Body/Informal Group		<input type="checkbox"/> Trust	
Annual business turnover*:		Average transaction value:*			% of sales via phone/mail/website:			
Description of Business goods and/or services:								
Date facility required				GST Number:				
Company Registration / Incorporation Number:				Date business established:				
Association Name (ie registered charity if any):				Association membership number (if any):				
Would you like to receive your monthly merchant statement via email?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Please advise what format would you like to receive this in: <input type="checkbox"/> CSV <input checked="" type="checkbox"/> PDF <input type="checkbox"/> Both					
Will any customer be paying prior to receiving the goods and/or services?				<input type="checkbox"/> Y	<input type="checkbox"/> N	skip questions below if 'N' is selected		
If Yes, how many days prior?		% of your credit card sales done this way?			Will you be charging a deposit/bond?	<input type="checkbox"/> Y	<input type="checkbox"/> N	
Will you be accepting payments for airline tickets? (I.A.T.A members only)				<input type="checkbox"/> Y	<input type="checkbox"/> N	skip questions below if 'N' is selected		
If Yes, how many days prior?		% of your credit card sales done this way?			Will you be charging a deposit/bond?	<input type="checkbox"/> Y	<input type="checkbox"/> N	

\* please estimate as close as possible - if average transaction value is not achieved, we may increase the Rates (as defined in the Terms) and you won't be able to terminate this Agreement or any part of it without paying the termination fee (see clause 8.4(a))

### B: AUTHORISED SIGNATORIES ON THE MERCHANT FACILITY

Given Names: (full name required)			Family Name: (surname)				
Date of Birth:			Phone:				
Given Names: (full name required)			Family Name: (surname)				
Date of Birth:			Phone:				

We are, or may be, required to verify your identity, the identity of the people listed in this form and certain other information provided in this form. Please refer to our list of acceptable verification documentation contained in our Application Form.

You and Windcave agree that Windcave will not be liable to you for accepting, or acting on instructions which Windcave believes to be from an authorised signatory of yours and you agree that the authorised signatories can create legal, valid, binding and enforceable obligations on you. You may, with Windcave's prior written consent, add to, or remove any of the authorised signatories. Windcave may request any details or information in respect of such authorised signatory before giving our consent.

### C:BILLING ACCOUNT INFORMATION

CHARGING ACCOUNT (Fees debited from) (must be a business account)	<input type="checkbox"/>										
SETTLEMENT ACCOUNT (Monies credited into) (must be a business account)	<input type="checkbox"/>										

## D: MERCHANT FACILITY PROCESSING DETAILS

### Card Types to be processed by Windcave:

<input type="checkbox"/> VISA	<input type="checkbox"/> MASTERCARD	<input type="checkbox"/> CHINA UNIONPAY	<input type="checkbox"/> DEBIT (EFTPOS)	<input type="checkbox"/> ALIPAY	<input type="checkbox"/> WECHAT	<input type="checkbox"/> DINERS
-------------------------------	-------------------------------------	---	---	---------------------------------	---------------------------------	---------------------------------

### PROCESSING METHOD

EFTPOS Terminal	Terminal Type:		Terminal Version:		No. of Terminals:		
	<input type="checkbox"/> Swipe/Dip	<input type="checkbox"/> PAN/Entry (card not present)	<input type="checkbox"/> EOV (Offline Transactions)				
	<input type="checkbox"/> Contactless	<input type="checkbox"/> Refunds (transaction matched)	<input type="checkbox"/> Auth/Complete				
Online (where selected and completed, the terms of Schedule 1 shall be deemed to be automatically incorporated into the Agreement):	<input type="checkbox"/> Electronic Commerce	<input type="checkbox"/> Mail and/or Telephone Orders	<input type="checkbox"/> Batch				
	<input type="checkbox"/> Recurring	<input type="checkbox"/> Tokenisation	<input type="checkbox"/> Auth/Complete				
	<input type="checkbox"/> Refunds	<input type="checkbox"/> Other					
	Gateway:		Product:				
Website/Test Link:		Login: (if test link provided)		Password: (if test link provided)			
Mobile:	<input type="checkbox"/> Windcave Payments App	<input type="checkbox"/> Other					
	Service Provider:		Product:				

## E: MERCHANT FACILITY PROCESSING DETAILS

Merchant Services Fee (MSF): Per Scheme transactions processed. Or refer to clause 7 of the Terms	<input type="checkbox"/> Blended	<input type="checkbox"/> Unblended	<input type="checkbox"/> Blended	<input type="checkbox"/> Blended		
	Visa / Mastercard % Charges		China UnionPay % Charges		WeChat % Charges	
	Manual / EFTPOS swipe/dip	TBD %	Manual / EFTPOS swipe/dip	TBD %	Manual / EFTPOS swipe/dip	TBD%
	Electronic Commerce / Online MOTO	TBD %	Electronic Commerce / Online MOTO	TBD %	Electronic Commerce / Online MOTO	TBD%
	Contactless Debit:	TBD %	Alipay % Charges		Diners / Discover % Charges	
			Manual / EFTPOS swipe/dip	TBD %	Manual / EFTPOS swipe/dip	TBD%
			Electronic Commerce / Online MOTO	TBD %	Electronic Commerce / Online MOTO	TBD%
	Windcave may change your Rates at any time by giving you written notice. Subject to clause 7.4 of the Terms, you may terminate the Agreement with one month's prior written notice to us if Windcave increases your Rates by 5% or more in any consecutive 12 month period.					

## F: AUTHORITY/DISCLOSURE

### You, the merchant:

- agree that the merchant services facility (if granted by Windcave) will be subject to the Agreement (which includes each document referred to in it, including the Merchant Operating Guide);

### By signing this signature section, the signatory:

- personally warrants that he or she has the authority to bind the merchant to this Agreement;
- holds him or herself as able to give the authorisations contained in the Terms, on behalf of the merchant;
- acknowledges that he or she has obtained the permission (and such permission is ongoing) of each director, partner and owner of the merchant in relation to the collection, storage, processing and use of the personal information of those persons in accordance with this Agreement;
- personally warrants that he or she has received, read and understood clauses 1 to 22 of the Terms and each document referred to in clause 1 of the Terms, including the provisions of the Supplementary Schedule (if applicable) and the Merchant Operating Guide; and
- personally warrants that all the information contained in this Signature Section is true and correct as at the date of signing.

### Signed for on behalf of you, the merchant:

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: (DD/MM/YY) \_\_\_\_\_

### Signed for on behalf of us, Windcave New Zealand Limited:

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: (DD/MM/YY) \_\_\_\_\_

## G: DIRECT DEBIT AUTHORITY FORM

Please check this box if you already have a direct debit set up with Windcave, and authorize Windcave to deduct the charges outlined in this Agreement via direct debit. If you check this box, you do not need to fill out this Form G (Direct Debit Authority Form).

Full Name:											<b>IMPORTANT:</b> Complete this form and return it with your bill payment to Windcave New Zealand Limited, PO Box 8400, Auckland 1150, New Zealand. Once your Direct Debit has been set up and activated, it will be indicated on your Windcave bill.				
Phone Number:															
Trading Name:						Customer ID:									
Name:(of Bank account)															
<b>Bank Account from which payments are to be made:</b>															
Bank	Branch	Account								Suffix					
(please also attach a bank-encoded deposit slip to ensure your account number is loaded correctly)															
<b>To the Manager</b>															
Bank:															
Branch:															
Address:															
Town/City															
I/We authorise Windcave to Direct Debit my/our account with all amounts which Windcave charges subject to this Agreement. I/We acknowledge and accept that the bank accepts this authority only upon the conditions listed below.															
Information to appear on my/our bank statement:															
W	I	N	D	C	A	V	E								
Payer Particulars				System Generated											
(please also attach a bank-encoded deposit slip to ensure your account number is loaded correctly)															
Your signature(s): _____ Date: (DD/MM/YY) _____															
<b>APPROVED</b>				<b>FOR BANK USE ONLY:</b>											
Date received:				Recorded by:			Checked by:			Bank Stamp:					
1148															
11/04															
<b>CONDITIONS OF THIS AUTHORITY TO ACCEPT DIRECT DEBITS</b>							9 months from the date when the first Direct Debit was debited to my/our account by the Initiator under the Instructions								
<b>1. The Initiator:</b>							<b>3. The Customer acknowledges that:</b>								
1.1 Will provide notice either:							3.1 This Instruction will remain in full force and effect in respect of all Direct Debits passed to my/our account in good faith notwithstanding my/our death, bankruptcy or other revocation of this Instruction until actual notice of such event is received by the Bank.								
1.1.1. in writing; or							3.2 In any event this Instruction is subject to any arrangement now or hereafter existing between me/us and the Bank in relation to my/our account.								
1.1.2. by electronic mail where the Customer has provided prior written consent to the Initiator.							3.3 Any dispute as to the correctness or validity of an amount debited to my/our account shall not be the concern of the Bank except in so far as the Direct Debit has not been paid in accordance with this Instruction. Any other disputes lies between me/us and the Initiator.								
1.2 Has agreed to give advance Notice of the net amount of each Direct Debit and the due date of the debiting is 0 calendar days (but not more than 2 calendar months) before the date when the Direct Debit will be initiated							3.4 Where the Bank has used reasonable care and skill in acting in accordance with this Instruction, the Bank accepts no responsibility or liability in respect of:								
1.2.1 The advance notice will include the following message: "Unless advice to the contrary is received from you by (date*), the amount of \$..... will be directly debited to your Bank account on (initiating date*)." *This date will be at least two (2) days prior to the initiating date to allow for amendment of Direct Debits.							3.4.1. the accuracy of information about Direct Debits on Bank statements; and								
1.3 May, upon the relationship which gave rise to this Instruction being terminated, give notice to the Bank that no further Direct Debits are to be initiated under the Instruction. Upon receipt of such notice the Bank may terminate this Instruction as to future payments by notice in writing to me/us.							3.4.2. any variations between notices given by the Initiator and the amounts of Direct Debits.								
1.4 May rely on this authority to debit a different bank account upon receipt of instructions from the customer via a bank to which their account has been transferred.							3.5 The Bank is not responsible for, or under any liability in respect of the Initiator's failure to give notice in accordance with clause 1.1, nor for the non-receipt or late receipt of notice by me/us for any reason whatsoever. In any such situation the dispute lies between me/us and the Initiator.								
1.5 May assess a \$25.00 fee from you for each individual Chargeback you incur. For the avoidance of doubt, a Chargeback is defined as the return of funds to your consumer, initiated by an issuing bank of the instrument used by the consumer to settle a debt.							<b>4. The Bank may:</b>								
<b>2. The Customer may:</b>							4.1 In its absolute discretion conclusively determine the order of priority of payment by it of any monies pursuant to this or any other Instruction, cheque or draft properly signed by me/us and given to or drawn on the Bank.								
2.1 At any time, terminate this Instruction as to future payments by giving written (or by the means previously agreed in writing) notice of termination to the Bank and to the Initiator.							4.2 At any time terminate this Instruction as to future payments by notice in writing to me/us.								
2.2 Stop payment of any Direct Debit to be initiated under this Instruction by the Initiator by giving written notice to the Bank prior to the Direct Debit being paid by the Bank.							4.3 Charge its current fees for this service in force from time to time.								
2.3. Request the Bank to reverse any Direct Debits initiated by the Initiator under the Instructions by debiting the amount of the Direct Debits back to the Initiator through the Initiator's Bank where the Initiator cannot produce a copy of the Instructions and/or Confirmation to me/us that I/we are reasonably satisfied demonstrate that I/we have authorised my/our bank to accept Direct Debits from the Initiator against my/our account PROVIDED the request is made not more than							4.4 Upon receipt of an "authority to transfer form" signed by me/us from a bank to which my/our account has been transferred, transfer to that bank this Authority to Accept Direct Debits.								

## H: PERSONAL GUARANTEE

### CONTINUING PERSONAL GUARANTY PROVISION ("GUARANTY") – PERSONAL GUARANTOR (Capitalized terms not defined in this Guaranty have the meanings set forth below in the Terms and Conditions)

By signing below, each individual or entity ("Guarantor") jointly and severally (if there is more than one Guarantor) and unconditionally and irrevocably guarantees to Windcave the prompt payment and full and complete performance of all obligations of Merchant identified above under the Agreement, as amended from time to time, including, without limitation, all promises and covenants of the Merchant, and all amounts payable by Merchant under the Agreement, including, without limitation, charges, interest, costs and other expenses, such as attorneys' fees and court costs. This Guaranty means, among other things, that Windcave can demand performance or payment from any Guarantor if Merchant fails to perform any obligation or pay any amount Merchant owes under the Agreement.

Each Guarantor agrees that his or her liability under this Guaranty will not be limited or canceled because: (1) the Agreement cannot be enforced against Merchant for any reason, including, without limitation, the initiation of bankruptcy proceedings; (2) Windcave agrees to changes or modifications to the Agreement, with or without notice to Guarantor; (3) Windcave releases any other Guarantor or Merchant from any obligation under the Guaranty or Agreement, as applicable; (4) any Law affects the rights of either Windcave or Merchant under the Agreement; and/or (5) anything else happens that may affect the rights of Windcave against Merchant or any other Guarantor.

Each Guarantor further agrees that: (a) Windcave may delay enforcing any of their rights under this Guaranty without losing such rights; (b) Windcave can demand payment from such Guarantor without first seeking payment from Merchant or any other Guarantor or from any security held by Windcave; and (c) such Guarantor will pay all court costs, legal fees, and collection costs incurred by Windcave in connection with the enforcement of the Agreement or this Guaranty, whether or not there is a lawsuit, and such additional fees and costs as may be directed by a court. If Merchant is a corporation, partnership or other entity, this Guaranty must be executed by a principal of Merchant.

Principal #1: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Principal #2: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

## MERCHANT SERVICES FACILITY AGREEMENT TERMS & CONDITIONS

### 1 Documents Forming Part of This Merchant Services Facility Agreement

**1.1 Agreement:** The following documents form the Agreement between you and Windcave and shall apply in the following order of precedence (the first listed having precedence in the event of any conflict over the second and so on):

- (a) any variation notified to you in writing by Windcave;
- (b) the Signature Section;
- (c) Information Update;
- (d) the specific terms and conditions contained in any applicable Supplementary Schedule attached to these general terms and conditions;
- (e) these general terms and conditions; and
- (f) the Merchant Operating Guide.

**1.2 Acknowledgement:** You acknowledge that you have read and understood all of the terms and conditions in each of the documents listed above and that Windcave has recommended that you seek legal advice in relation to those documents.

**1.3 Supplementary Schedules:** The terms and conditions of a Supplementary Schedule will apply to you if you have selected the relevant transaction type to which that Supplementary Schedule applies on the Signature Section and Windcave has accepted your application on those terms.

### 2 Term

**2.1 Term:** This Agreement will commence on the date that you sign the Signature Section and will continue for the Initial Term of thirty six (36) months and each Subsequent Term, unless it is terminated earlier by either of us in accordance with clauses 2.3 or 7.

**2.2 Application of Supplementary Schedule:** If, at a later date, you wish to process transactions not selected by you on the Signature Section to which a Supplementary Schedule applies, you may make a request to process those transactions to Windcave. If Windcave accepts your request by advising you in writing, the terms of the relevant Supplementary Schedule will apply to you as if they were part of the Agreement from the date Windcave advised you in writing of its acceptance.

**2.3 Automatic Extension:** At the end of the Initial Term this Agreement will automatically continue for further periods of thirty six (36) months (each a "Subsequent Term"), until terminated in accordance with clause 7, unless you give Windcave at least ninety (90) days written notice of termination before the end of the Initial Term or any Subsequent Term (as the case may be).

### 3 Scope

**3.1 Merchant Services:** Subject to this Agreement, Windcave will provide you with the Merchant Services specified on the Signature Section and more specifically set out below. The Merchant Services may only be used by you and may not be used by, or on behalf of, any third party (including any associated company or related body corporate of yours), without our prior written authorisation.

**3.2 Title:** Title to all Windcave Products will at all times remain with Windcave.

**3.3 Settlement:** Windcave has the following obligations to you:

- (a) to pay all such moneys, and do all such acts, which Windcave believes are reasonably necessary to ensure that an amount which is equal to the total dollar amount of a Valid Electronic Card Sales Transaction (as entered in the Terminal through which the Electronic Card Sales Transaction was facilitated) is credited to Your Account; and
- (b) following the end of each calendar month, Windcave will forward you a statement of all Card Sales Transactions which you have entered into during that month and of which Windcave has actual knowledge. However, Windcave will not be bound, or in any way prejudiced, by any error, mistake, omission or representation contained in any such statement.
- (c) to accept all sales Transactions processed by you in accordance with the Agreement and, subject to the other provisions of the Agreement, to credit your Nominated Settlement Bank Account with the full amount of such Transactions on the basis that the debt due by the Cardholder to you in respect of the Transaction is extinguished; and
- (d) to accept all Refund Transactions processed by you in accordance with the Agreement and to debit your Nominated Settlement Bank Account with the full amount of each Refund Transaction.
- (e) Where settlement is effected on a day other than a Business Day, we will use all reasonable endeavours to ensure that you receive value on the next Business Day.
- (f) You agree that if:
  - (i) you fail to pay any penalty imposed by the Nominated Card Schemes in accordance with the Agreement; or
  - (ii) we suspect you of any fraudulent or suspicious activity; or
  - (iii) we assess you as a high credit or fraud risk; or
  - (iv) you have breached the Agreement; or
  - (v) we otherwise determine on reasonable grounds that it is justified in order to prevent loss to you or us;we may, at our sole discretion, immediately re-route Transactions to a suspense account. In such cases we will make the proceeds in the suspense account available to you when we are satisfied that none of the matters or circumstances listed in sub clauses (i) to (v) apply or exist, or such matters or circumstances have been remedied to our satisfaction (in each case, as applicable).
- (g) For the avoidance of doubt, you acknowledge that you have no ownership of any funds transferred to a suspense account until those funds are transferred to your Nominated Settlement Bank Account, and that no interest is payable on the funds while they are held by us.

**3.4 Invalid Transactions:** Windcave is under no obligation to make a payment to any person, or to do any other act, in respect of a Card Sales Transaction which is not Valid. A Transaction is invalid if:

- (a) the Transaction is illegal, including, without limitation, because it is in breach of any Law governing, for example, the sale of prescription medicines, controlled substances or other regulated products;
- (b) the date of the Transaction is a date after the Agreement was suspended or the Merchant Facility was frozen in accordance with clause 3.8 or terminated in accordance with clause 7;

- (c) you process the Transaction knowing (or in circumstances where you would reasonably be expected to know) that the Nominated Card is used without the authority of the Cardholder;
- (d) you were notified by us not to accept the Nominated Card used in the Transaction;
- (e) the Nominated Card used in the Transaction is not used within the current validity dates shown on the Nominated Card;
- (f) the particulars on the copy of the Transaction Receipt given to the Cardholder are not identical with the particulars on any other copy;
- (g) the Transaction is recorded in a currency other than New Zealand dollars, except where we have given prior written approval to you to record Transactions in other currencies;
- (h) the price charged for the goods or services to which the Transaction relates is more than your normal price which is charged to the general public;
- (i) the Transaction value exceeds the Electronic Off-Line Payment Limit when processing an Electronic Off-Line Transaction;
- (j) in our reasonable opinion the Transaction relates to one or more purchases made in the same Merchant establishment which have been split into 2 or more Transactions in an attempt to avoid the Electronic Off-Line Payment Limit;
- (k) you have arranged, without our consent, for a person other than you to supply goods or services;
- (l) you process the Transaction knowing (or in circumstances where you should have known) that the Transaction is fraudulent;
- (m) the Cardholder has not received the goods or service as required by the terms of the Transaction (and, in the case where you are not the provider of the goods or services and act as agent for the provider of the goods or services, the goods or services have not been provided by the principal) and you have failed to provide us with proof of receipt of, and satisfaction with, the goods or services by the Cardholder within five (5) Business Days of our request to do so;
- (n) the goods or services to which the Transaction relates were supplied from outside New Zealand without our consent;
- (o) you have not otherwise complied with the Agreement in connection with the Transaction and we are of the reasonable opinion that such non-compliance may result in either us or you suffering a loss;
- (p) you bill the amount of the Transaction direct to the Cardholder or receive payment through the use of another card or by any other means;
- (q) the card number or truncated card number appearing on the Transaction Receipt does not correspond with the card number printed, encoded or otherwise shown on the Nominated Card used for the Transaction;
- (r) you fail to lodge Transactions with us for settlement in accordance with the terms of this Agreement and the Merchant Operating Guide;
- (s) the same Transaction is processed by you more than once;
- (t) the Transaction was processed in breach of the requirements of any Nominated Card Scheme Regulations notified by us to you;
- (u) the Transaction is not authorised by us or the authorisation request is declined for any reason;
- (v) in the case of an Electronic Off-Line Transaction, you process the Transaction knowing (or in circumstances

- where you should have known) that the signature on the Transaction Receipt is forged or unauthorised and/or
- (w) in our reasonable opinion, the Cardholder justifiably disputes liability for the Transaction for any reason or has not received the goods or services purchased.

### 3.5 Processing Debit Transactions:

- (a) You must only use EFTPOS Terminals to process Transactions.
- (b) You must use reasonable care in processing a Transaction to detect forged or unauthorised signatures or the unauthorised use or forgery of a Card. In particular, you must comply with specific requirements set out in the Merchant Operating Guide or otherwise notified by us in writing to you.
- (c) Following each Transaction you must immediately give the Cardholder a copy of the Transaction Receipt if requested. The Transaction Receipt must include the following:
  - (i) type of account;
  - (ii) type and amount of the Transaction;
  - (iii) date of the Transaction;
  - (iv) time of the Transaction;
  - (v) Transaction record number; and
  - (vi) confirmation that the Transaction has been accepted or approved.
- (d) The information on the Cardholder Transaction Receipt must be identical with information on any other copy of the Transaction Receipt.
- (e) You must prominently and clearly inform the Cardholder of your identity so that the Cardholder can readily distinguish you from any supplier of goods or services to you. You must also notify the Cardholder that you are responsible for:
  - (i) the sales Transaction including any goods or services that are the subject of the sales Transaction;
  - (ii) all customer service relating to the sales Transaction;
  - (iii) dispute resolution in connection with the sales Transaction; and
  - (iv) performance of the terms and conditions of the sales Transaction.
- (f) You must not process a Transaction unless the Cardholder's identity is verified as follows:
  - (i) by the correct entry of the Cardholder's PIN into the EFTPOS Terminal, followed by the verification of the PIN with an 'ACCEPTED' response displayed on the EFTPOS Terminal; or
  - (ii) in the case of an Electronic Off-Line Transaction, verification of the Cardholder's signature, whereby you must take all reasonable steps to ensure that the signature on the Transaction Receipt is not forged or unauthorised and that it corresponds with the signature on the card.
- (g) You must comply with all applicable Laws, any obligations in the Agreement and any direction from us in carrying out your obligations in processing Transactions under the Agreement.
- (h) You must ensure you process all Transactions in accordance with the requirements of any Nominated Card Scheme Regulations that we notify to you. You agree to demonstrate your compliance with the Nominated Card Scheme Regulations if we request you do so.

- (i) You must ensure that each Transaction is recorded in New Zealand Dollars.
- (j) You must process all Debit Transactions and credit card transactions (including transactions using debit and pre-paid products where the transaction is treated as a credit card transaction) through us, except where we have agreed otherwise.
- (k) If electronic processing is not available for any reason, including but not limited to a technical malfunction at the Switch or failure of the telecommunications links and your EFTPOS Terminal has Electronic Off-Line Transaction functionality you must process these Transactions in accordance with the Merchant Operating Guide and these Terms and Conditions. Where we are the Card Issuer, we will not dishonour any payment made to you pursuant to an Electronic Off-Line Transaction that is an authorised Transaction and is for an amount that does not exceed the respective Electronic Off-Line Payment Limit.
- (l) When completing an Electronic Off-line Transaction you must:
  - (i) ensure that if the Transaction is stored within a point of sale device attached to the EFTPOS Terminal, such point of sale device is secure against unauthorised access;
  - (ii) not process any Transactions that exceed the Electronic Off-line Payment Limit;
  - (iii) not use two or more Electronic Off-Line Transactions to effect one Transaction if the amount of the Transaction exceeds the Electronic Off-line Payment Limit; and
  - (iv) retain a signed copy of the Transaction Receipt for at least twenty-four (24) months.
- (m) In all circumstances when an Electronic Off-line Transaction is conducted, it must not be used to:
  - (i) provide a Cardholder with cash;
  - (ii) process a Transaction where the card's magnetic strip, stripe or chip is unable to be read by the EFTPOS Terminal;
  - (iii) process a Transaction which has been previously declined;
  - (iv) process a Transaction which could not be completed as a result of Cardholder PIN errors; or
  - (v) process a Transaction away from your normal site of business.
- (n) For the avoidance of doubt, we may freeze and/or terminate processing of Transactions for you, in accordance with the termination and Card freezing provisions of this Agreement, while maintaining processing for other Card Transactions.

### 3.6 Transaction Information

- (a) You must lodge Transactions with us for settlement in accordance with the Merchant Operating Guide and, in the case of a Transaction processed through an EFTPOS Terminal, immediately by entering the Transaction.
- (b) You must retain information about a Transaction for a period of twenty-four (24) months from the date of the Transaction or such other period required by Law or notified by us.
- (c) You must destroy any information about the Transaction on the later of:
  - (i) the expiry of the twenty-four (24) month period; or

- (ii) the date on which you have no further business or legal reason for retaining the information.
- (d) You must ensure that Cardholder data is destroyed in the following manner:
  - (i) shred, incinerate, or pulp hardcopy materials so that Cardholder data cannot be reconstructed; and
  - (ii) render Cardholder data on electronic media unrecoverable so that Cardholder data cannot be reconstructed.
- (e) You must provide any information about a Transaction which is requested by us within five (5) Business Days of receipt of the request.
- (f) You must provide any information or reporting reasonably required by us regarding any Transactions.

### 3.7 Nominated Settlement Bank Account

- (a) You must maintain a Nominated Settlement Bank Account for the term of the Agreement. This account must be a New Zealand based, New Zealand Dollar transactional bank account.
- (b) You authorise us to debit and credit your Nominated Settlement Bank Account for the purposes of the Agreement.
- (c) We reserve the right, acting reasonably, to require you to maintain a minimum credit balance in any Nominated Settlement Bank Account during the term of the Agreement. Any such minimum credit balance will be notified by us to you from time to time.
- (d) You must provide us with a properly completed direct debit authority for your Nominated Settlement Bank Account.

### 3.8 Suspension of Merchant Services

- (a) We reserve the right to suspend or freeze the Merchant Services, or hold the funds for settlement, immediately on notice to you if you do not adhere to your obligations set forth in clause 4 and elsewhere in this Agreement. When exercising this right we are not required to notify you of the date on which we suspend or freeze the Merchant Services.
- (b) When we suspend the Merchant Services:
  - (i) you must not accept any Nominated Cards as payment for goods or services; and
  - (ii) we are not obliged to accept any Transactions processed by you after notification of suspension.
- (c) We may during the period of suspension or freezing of the Merchant Services terminate the Merchant Services under clause 7.
- (d) We may also suspend the availability of various types of Nominated Cards for such period or periods as we may consider appropriate if:
  - (i) we reasonably consider that the principles of prudent banking require such action; or
  - (ii) a financial institution has suspended the use of those types of its Nominated Cards.

We will use all reasonable endeavours to give you notice of suspension of Nominated Card types, after we have received notification. For the purposes of this clause, notice to you can include publishing a general notice in major daily metropolitan newspapers in Auckland, Wellington, Christchurch and Dunedin. For the avoidance of doubt, we are not required to notify you of the suspension of individual Nominated Cards.

## 4 Your Obligations

**4.1 Compliance:** You must always comply with all documents forming part of this Agreement (as listed in clause 1).

**4.2 General obligations:** You must:

- (a) immediately notify Windcave of any change to your financial position which may affect your ability to perform your obligations under this Agreement;
- (b) allow Windcave employees, contractors, or Agents, or those of any Card Scheme, acting reasonably, to enter your premises during normal business hours to check your compliance with this Agreement or the relevant Card Scheme rules;
- (c) provide Windcave with all information and assistance it reasonably requires to perform its obligations and to deal with any queries in relation to the provision of the Merchant Services;
- (d) at all times have Your Account opened;
- (e) give Windcave at least ten (10) Business Days' prior written notice of any proposed:
  - (i) change in the control, management, or ownership of you or the effective control, effective management or effective ownership of you;
  - (ii) move in your principal place of business and your new address;
  - (iii) change in your business name;
  - (iv) substantial change in the type of goods and/or services you sell; or
  - (v) change in your status as a member of an Association (if applicable);
- (f) at all times comply with the terms of the EFTPOS Services Agreement if you are a party to that agreement;
- (g) only process the types of Card Sales Transactions authorised by Windcave following Windcave assigning you a merchant number for each authorised transaction type; and
- (h) comply with any laws, rules, or requirements in relation to Card Sales Transactions or this Agreement.

**4.3 Obligations to Cardholders:** You must:

- (a) accept any Card as selected in the Signature Section without discrimination;
- (b) if you add a Surcharge Fee to your normal prices when a Cardholder chooses to pay with a Card, you must:
  - (i) clearly display notices, signs or decals at your premises that comply with the requirements set out in clause 4.3(k);
  - (ii) clearly display, to the Cardholder, as part of the Card Sales Transaction environment or process, that if they choose to pay with a Card there will be a Surcharge Fee assessed on the Card Sales Transaction, and give the Cardholder an opportunity to cancel the Card Sales Transaction
  - (iii) ensure the Surcharge Fee bears a reasonable relationship to your cost of accepting the Card, and is applied on a flat basis;
  - (iv) include the Surcharge Fee as part of a total single Card Sales Transaction, and not collect it separately;
  - (v) not describe the Surcharge Fee as, or inform the Cardholder that the Surcharge Fee is, imposed by the Card Scheme or by Windcave;

- (vi) be aware that you may apply a Surcharge Fee to any or all the branded cards of a Card Scheme;
- (vii) ensure that, in the case of a Visa Transaction, the Transaction Receipt displays:
  - Merchant name
  - Merchant city and country
  - Transaction amount (or credit), indicated in transaction currency
  - Surcharge Fee (or credit), indicated in transaction currency
  - Total amount (or credit) indicated in transaction currency
  - Transaction date (or credit) preparation date
  - Account Number (Cardholder copy must have Truncated Account Number)
  - Space for Cardholder signature or PIN Verification notation (if Chip & Pin)
  - Authorisation Code
  - Transaction type (purchase or credit).
- (c) not accept a Card Sales Transaction for giving a Cardholder cash except where the Card is being used as a debit card;
- (d) perform all obligations to the Cardholder in connection with a sale before notifying Windcave of the Card Sales Transaction;
- (e) not use Cardholder names, account numbers or other transaction information embossed, encoded or appearing in any other manner on the card for any purpose other than for the sole purpose of assisting you with completing the Card Sales Transaction, or as specifically required by law;
- (f) not sell, purchase, provide or exchange a Cardholder's name or account number information obtained by reason of a Card Sales Transaction to any third party, other than:
  - (i) your Agents for the purpose of assisting you in completing the Card Sales Transaction;
  - (ii) Windcave;
  - (iii) the Card Issuer;
  - (iv) the Card Scheme; or
  - (v) as required by law;and in each case in compliance with applicable law;
- (g) maintain systems, records and media containing Cardholder Data or Card Sales Transaction information in a secure manner so as to prevent access by or disclosure to anyone other than as permitted by clause 4.3(f) and ensure that any information accessible from the internet is protected by a firewall and any electronic data is held in encrypted form;
- (h) retain all information held pursuant to clause 4.3(g), including all Transaction Records, for a period of eighteen (18) months from the date of the transaction;
- (i) ensure that if you discard or destroy any Cardholder Information or records, or any Transaction Records (including Sales Vouchers) after the time period for retaining such information has expired, it is done in a secure manner so as to prevent disclosure to anyone other than as permitted by clause 4.3(f);  
not:
  - (i) make any representation in relation to the goods and/or services provided by you that would bind Windcave, Visa and/or MasterCard; or
  - (ii) indicate or imply that Windcave, Visa and/or MasterCard endorses or sponsors any of your goods and/or services; or

- (iii) refer to Windcave, Visa and/or MasterCard in stating eligibility to purchase the goods and/or services provided by you;
- (k) prominently disclose to the Cardholder:
  - (i) your identity (at all points of interaction with the Cardholder);
  - (ii) your full responsibility for the Card Sales Transaction, the products and/or services, the terms and conditions of sale, customer service and resolution of disputes;
  - (iii) if you intend to impose a Surcharge Fee when a Cardholder chooses to pay with a Card you must display notices, signs or decals at your physical premises, as well as a notice next to your point of sale, in a minimum of Arial 10 point font, disclosing that you will apply a Surcharge Fee when payment is made by Card. If you do not have a physical point of sale, you must prominently communicate in an e-commerce transaction or telephone order that a Surcharge Fee will be assessed when payment is made by Card; and in relation to that Card Sales Transaction; and attempt to resolve any dispute with a Cardholder directly without the involvement of Windcave. Windcave is not a party to any agreement made between yourself and a Cardholder and should be viewed as a payment processing provider only.

Nothing in this Agreement prohibits you from steering Cardholders to other forms of payment by offering discounts, promotions or financial incentives to encourage Cardholders to use other forms of payment (including steering to a card from a particular Card Scheme or EFTPOS or a particular card from within a Card Scheme's suite of cards).

#### **4.4 Obligations when accepting Cards:** You must:

- (a) use reasonable care to detect forged or unauthorised signatures and fraudulent use of PINs or Cards. The Merchant Operating Guide sets out the minimum procedures you must follow to comply with this requirement;
- (b) obtain a prior Authorisation for a transaction if you are required to under the provisions of the Merchant Operating Guide;
- (c) not avoid the need for an Authorisation by accepting payment for goods or services via two or more Card Sale Transactions or allowing the Cardholder to purchase items separately;
- (d) not set a minimum or maximum amount for a Card Sales Transaction;
- (e) not ask a Cardholder to reveal their PIN or any other secret identifier not supplied by you; and
- (f) follow the sales procedures set out in the Merchant Operating Guide.
- (g) You may use a Card in a Debit Transaction conducted through an EFTPOS Terminal to give a Cardholder cash unless we have advised you that a particular Card or Card Scheme cannot be used to give cash.

#### **4.5 Obligations with respect to Windcave Products:** You must:

- (a) only use Windcave Products when completing a Card Sales Transaction;
- (b) keep all Windcave Products at your place of business and safe from damage, loss, or theft;
- (c) not sell, hire, part with possession or otherwise deal with any Windcave Products;
- (d) immediately notify Windcave if any Windcave Products become damaged, lost or stolen;

- (e) pay to Windcave any amount it requests for repairing or replacing any Windcave Products, including as a result of any failure to return Windcave Products following termination of this Agreement; and
- (f) if you are using EFTPOS Terminal Equipment:
  - (i) comply with the equipment user guide supplied by the Terminal vendor;
  - (ii) only use equipment that has been certified by Paymark Limited or Windcave; and
  - (iii) only use equipment that complies with EMV/3DES Card Scheme security standards; and
- (g) immediately return any Windcave Products, including EFTPOS Terminal Equipment if you are leasing from us, following the termination of this Agreement and allow any agent or representative of Windcave on to your premises in order to reclaim any Windcave Products.

**4.6 Obligations for Securing Cardholder Information:** If your business or any Agent operating on your behalf, stores, processes, transmits or has access to Cardholder Information, you must ensure that it is maintained in a secure manner with access restricted to authorised personnel, and you must also ensure that you and your business fully complies with the Payment Card Industry Data Security Standard (PCI DSS). For details of the PCI DSS contact Windcave at [support@windcave.com](mailto:support@windcave.com) or visit the PCI website at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org).

The requirements of PCI DSS include, but are not limited to:

- (a) You must protect Cardholder Information by:
  - (i) never storing full contents of track data from the magnetic stripe of the Card or Card Validation Code (three-digit value printed on the signature panel of a MasterCard or Visa card) after Authorisation;
  - (ii) storing the Cardholder Information in a secure environment (as defined by PCI DSS) and only storing such information for the extent and duration required for bona fide purposes;
  - (iii) storing all data containing Cardholder Data, whether in physical or electronic format (e.g. Authorisation Logs, Transaction Reports and Transaction Receipts) in a secure manner that allows access to authorised personnel only; and
  - (iv) encrypting Card Numbers on Receipts and in databases or using only a part of the Card Number (e.g. print the first 6 and/or last few digits of the Card Number on receipts).
- (b) securely destroying all media containing Cardholder Information that is no longer needed for business, legal or regulatory reasons;
- (c) notifying Windcave of any Agents engaged by you for processing or storing Cardholder Information;
- (d) using only Agents that meet all Card Scheme security requirements for the processing of Cardholder Information and contractually require those Agents to maintain ongoing compliance with PCI DSS. A list of compliant Agents can be obtained from Windcave;
- (e) within 3 months of being requested by Windcave, undergoing certification with PCI DSS and providing documentary evidence of your compliance. You are solely liable for the accuracy of the information in the PCI DSS certification documents. Information on how to become and remain compliant with PCI DSS can be obtained by

- contacting Windcave: email support@windcave.com, or call the Windcave 0800 PAYMENT (729 6368);
- (f) rectifying at your own expense, any areas of non-compliance within 6 months of being identified, or within a timeframe agreed with Windcave;
  - (g) maintaining full compliance with PCI DSS on an ongoing basis by undergoing such certification tasks as requested by Windcave from time to time. It remains your responsibility to ensure ongoing PCI DSS compliance, regardless of any notification by Windcave. You are liable for any fees that may be charged by the Card Schemes in respect of registration for PCI DSS.
  - (h) You must provide us with a Compliance Action Plan (if required by any Nominated Card Scheme) for the purposes of complying with any relevant PCI DSS requirements within ninety (90) days of receiving a request from us to do so. You must also comply with all Nominated Card Scheme Regulations as specified in the Agreement or otherwise notified to you from time to time, including any obligations regarding compliance with the PCI DSS. We will endeavour to notify you of any such obligations.
  - (i) You must comply with the terms of any notice we send to you by the deadline specified by such notice.

**4.7 Obligations in the Event of a Data Breach:** You must:

- (a) maintain an Incident Response Plan for immediate reporting and handling of any exposure of Cardholder Data at your site;
- (b) if you know of or suspect a Data Breach at your company or that of any Agent:
  - (i) report the Data Breach immediately to Windcave;
  - (ii) take appropriate action, including withdrawal of internet shopping facilities if appropriate, to minimise the ongoing risk to Cardholder Information, until such time as investigation and rectification of the Data Breach is completed;
  - (iii) implement and follow the Incident Response Plan;
  - (iv) maintain a rigorous audit trail of all actions taken to isolate and rectify the event;
  - (v) assist Windcave to the best of your abilities including providing detailed statements and schedules of Card accounts exposed by the Data Breach;
  - (vi) allow Windcave employees, contractors or Agents, or those of any Card Scheme, acting reasonably, full access to your systems and databases for the purpose of Forensic Review and Analysis, to ascertain the cause and impact of the exposure;
  - (vii) if you use the services of an external Agent, ensure that Windcave, the Card Schemes or their Agents are given full access to necessary outsourced components such as databases, web hosting systems etc. which may be required to complete the Forensic Review and Analysis; and
  - (viii) in order to be allowed to continue processing Card Sales Transactions, you will have to undergo a full PCI DSS accreditation.

**4.8 Liability for a Data Breach:** You are liable for all costs, charges and/or fines imposed by the Card Schemes, as a consequence of any Data Breach, including but not restricted to:

- (a) Card Scheme fines for Data Breach;
- (b) fines for failure to report the Data Breach in a timely fashion (as defined by the Card Schemes);

- (c) any costs levied by the Card Schemes for monitoring and/or reissue of credit cards compromised by the Data Breach;
- (d) all costs for Forensic Review and Analysis including following termination of this Agreement; and
- (e) costs for corrective action to address the cause of the Data Breach and for re-certification with PCI DSS.

**4.9 Liability for Chargebacks and Right to Dishonour:** You will at all times be liable, as detailed in the Merchant Operating Guide, for the full amount of any Chargebacks validly claimed by a Cardholder. In the event that you process an Invalid Transaction, you acknowledge that the Card Issuer and, in the case of a Refund, your Bank, has the right, but not the obligation, to dishonour the Transaction. For the avoidance of doubt, where the amount of an Electronic Off-line Transaction exceeds the Electronic Off-line Payment Limit and the Cardholder's Nominated Account has insufficient funds, the Card Issuer shall have the right, but not the obligation, to dishonour the whole amount of the Electronic Off-line Transaction.

**4.10 Liability and Authorisation:** Authorisation of a Transaction is not a representation or warranty by us to you that a Transaction is not an Invalid Transaction. You are liable for and, without limiting that liability, you irrevocably and unconditionally authorise Your Bank to debit your Account with the following amounts at any time after:

- (a) you have generated a Credit Voucher, the total dollar amount of the Credit Voucher;
- (b) any amount was credited to Your Account in error, or as a result of any error, mistake or omission, that amount;
- (c) any amount was credited to Your Account in respect of a Card Sales Transaction:
  - (i) which is not Valid;
  - (ii) in respect of which the Cardholder or Windcave disputes liability for any reason;
  - (iii) in respect of which the Cardholder asserts a claim for set-off, or a counterclaim, against Windcave for any reason, that amount;
- (d) any fee, cost, charge, liability, or expense or other amount becomes payable by you to Windcave (including MSFs, penalty fees, Chargebacks, fines imposed by Card Schemes and amounts payable under clauses 4.5, 4.6, 4.7, and 4.8), that amount;
- (e) any stamp duty, postage cost, commission, charge, fee, liability, expense or other amount being incurred by Windcave in connection with the Agreement, that amount; or
- (f) any other amount is owing to Windcave by you, that amount.

**4.11 Reserved.**

**4.12 Representations or Warranties:** You must not make any warranty or representation on Windcave's behalf without each time obtaining Windcave's prior written consent.

**4.13 Direct Debit Authority:** Without prejudice to the authority in clause 4.10, Windcave may, for the purposes of clause 4.10, require you to provide to Windcave a direct debit authority in a form required by Windcave. Notwithstanding the terms and conditions of any such authority, it may only be terminated or revoked if this Agreement is terminated in accordance with its terms and all amounts actually or contingently owing to Windcave by you have been satisfied.

**4.14 Returns:** You must establish a policy for the exchange or return of goods which are sold by you in the course of your business and make customers fully aware of the terms and conditions of that

policy which must be consistent with the provisions of the Merchant Operating Guide.

**4.15 Refunds:** For any refund:

- (a) you may only give a Cardholder a refund if you have seen a valid proof of purchase;
- (b) refunds may only be done by exchanging goods and/or services or by completing a Credit Voucher;
- (c) you must establish a fair policy for giving Refunds, exchanges, or return of goods for sales Transactions;
- (d) you may only give a Refund by means of a Transaction processed to the same Card on which the original Transaction was made, a credit note issued by you or an exchange of the goods, and not in cash or by cheque;
- (e) you must disclose your Refund policy to the Cardholder prior to the Transaction. You must at all times act in accordance with the instruction for processing Refunds contained in the Merchant Operating Guide; and
- (f) your Refund policy must detail a separate method for obtaining a Refund for online Transactions, and a separate method for obtaining a Refund for EFTPOS Transactions.

**4.16 Access to Your Records:** You must allow Windcave to inspect and examine your books of account and records (including, for the avoidance of doubt, any records in respect of Card Sales Transactions and Credit Vouchers) and you must provide Windcave with any other information which Windcave may reasonably request, including (but not restricted to) your audited financial statements.

**4.17 Collection of Information:** You authorise Windcave to create and maintain records in respect of you and your business and to collect information about you from any person or entity who Windcave deems appropriate, including:

- (a) any credit reporting agency or credit rating agency;
- (b) your Bank;
- (c) a Cardholder;
- (d) your employees, Agents, or advisers; and
- (e) any person or entity that Windcave believes can verify, or validly comment on, your creditworthiness or any statement or representation which you have made to Windcave; and you authorise each such person or entity to make available to Windcave all information requested by Windcave.

**4.18 Disclosure by Windcave:** You authorise Windcave to disclose any relevant information about you held by Windcave to any party Windcave appoints to exercise any of its rights or to undertake any of its obligations in relation to this Agreement, and any other person or entity that Windcave deems appropriate in relation to the provision of the Merchant Services, including:

- (a) any Card Scheme;
- (b) your Bank;
- (c) any Cardholder;
- (d) any supplier of Terminals;
- (e) other financial intermediaries or finance companies;
- (f) credit rating and/or reporting agencies;
- (g) any person or company that Windcave appoints to collect any outstanding amounts owed to it;
- (h) any government or governmental agency; and/or
- (i) any bank where such disclosure is for the purpose of protecting the banking industry in relation to excessive Chargebacks or high incidence of fraud at your Merchant establishment or for the benefit of the banking industry generally.

**4.19 Use of Information About You:** You authorise Windcave (and any of its related companies or Agents) to use any information that Windcave holds about you for any purpose connected with or

related to this Agreement, including providing services or enforcing rights or obligations under this Agreement, informing you about the full range of services that Windcave provides, performing credit checks on you and disclosing appropriate details to enable market research to be conducted.

**4.20 Prepayment Merchant or Prepaid Credit Card Sales:** If your business falls into a Prepayment merchant category or you have indicated on the Signature Section that you have Prepayment Card Sales Transactions, the following will apply:

- (a) you will be requested to provide Windcave with regular financial data information as stated in 4.16 to keep us informed of your financial viability. Information to be provided would include but will not be limited to:
  - (i) cash flow statements clearly segmenting Prepayment Card Sales Transactions to assist with Prepayment exposure assessment and monitoring. Statements will identify an appropriate running account balance of Prepayment Card Sales Transactions, including actual results for the quarter just ended and projections on a 12 month rolling basis;
  - (ii) financial reports as and when issued (e.g. annual, half yearly, quarterly) including independent audit certification (where they are obtained) confirming the accuracy of Prepayment Card Sales Transactions cash flow statements you have provided periodically;
  - (iii) immediate notice to Windcave of any significant increase or decrease in the level of Prepayment Card Sales Transactions;
  - (iv) liquidity reporting;
  - (v) net worth reporting;
  - (vi) estimate or actual transaction totals booked on prepaid basis;
  - (vii) changes to your point-of-sale procedures for Authorisation, refund policy and transaction flow;
- (b) you may be required to provide a financial reserve as security for the Prepayment risk that exists for your business. If security is required you will be required to sign additional documentation for that security;
- (c) you must inform Windcave immediately if your business is experiencing difficulties honouring goods or services commitments to your customers;
- (d) your merchant facility will be subjected to regular reviews by Windcave;
- (e) you will remain liable for any Chargebacks or outstanding monies owed to Windcave after the termination of this Agreement, as stated in clause 7.7;
- (f) if you have Prepayment Card Sales Transactions, Windcave's allowing you to continue to have Prepayment Card Sales Transactions may be conditional on your entering a Prepayment Limit Agreement with Windcave, pursuant to, which Windcave will at its discretion, from time to time, determine your limit allowed for Prepayment Card Sales Transactions.

**4.21 General:** You must:

- (a) not sell, purchase, provide or exchange any information or document relating to a Cardholder, a Cardholder's account number or a Transaction to any person other than us, the Card Issuer or as required by Law. You may disclose such information or document to your employees, contractors or agents as necessary in the course of conducting your business;

- (b) not take an imprint of, or record any information relating to, a Nominated Card or Cardholder;
- (c) ensure that any full card-read data in respect of Nominated Cards accessed by you in connection with a Transaction (or otherwise in connection with the Agreement) is stored only by you on an electronic file in a secure environment with restricted access in compliance with the Compliance Requirements, for the sole purpose of providing documentation for exception processing. You must not record, store, replicate or otherwise use full card-read data for any other purpose.

## 5 Fees Payable

---

**5.1 Rate:** Windcave will advise you of the Rate which will be used to calculate the MSF and may change the Rate at any time by giving you written notice. Initially, the Rate is that rate specified on the Signature Section. This rate will be calculated on the basis of a Blended MSF, Unblended MSF or Unbundled MSF option as chosen by you in the Signature Section. Without limiting this section 5.1, if you have selected EFTPOS as your processing method in the Signature Section, Windcave may increase your Rate if the percentage number of manual transactions (paper and PAN Entry) you process exceeds 5% of the total number of EFTPOS transactions you process in any three (3) month period. Windcave reserves the right to require you to set up a separate merchant facility for your Card Not Present transaction.

**5.2 MSF:** In consideration for providing the Merchant Services, you must pay Windcave the MSF each month as calculated in clause 5.3. The MSF is payable on the twentieth (20th) day of each calendar month (or, if that day is not a Business Day, on the next Business Day). Without limiting your liability to pay the MSF, Windcave will automatically direct debit the MSF from Your Account in the manner contemplated by clause 4.10(d).

**5.3 Calculation of MSF:** Subject to clause 5.4, the MSF is calculated as follows:

- (a) the MSF for each transaction type payable for each month is equal to the Rate for that transaction type multiplied by the Sales Amount for that transaction type, where Sales Amount equals the total value of all Card Sales Transactions for the particular transaction type which were completed by you during the previous calendar month; minus the aggregate of:
  - (i) the total value of all Credit Vouchers for the particular transaction type delivered to Windcave by, or in respect of, you during the previous calendar month; and
  - (ii) any amount debited to Your Account in respect of the particular transaction type during the previous calendar month pursuant to clause 4.10(c) if the amount was previously used to determine a MSF which was paid by you;
- (b) the total MSF payable for each month is equal to the sum of each MSF for each transaction type calculated in clause 5.3(a).

**5.4 Minimum Monthly MSF:** If any individual MSF calculated under clause 5.3(a) is less than the Minimum Monthly MSF applicable to the relevant transaction type, the amount for the purposes of clause 5.3(b) will be deemed to be the applicable Minimum Monthly MSF.

**5.5 Default Interest:** You must pay interest at 10% per annum (calculated on a daily basis) on any amount payable to Windcave

under clauses 4.10, 5.2, or 8.1 of this Agreement which is overdue from the date the payment is due until the date the payment is received in full by Windcave, unless, in Windcave's discretion, Windcave by notice in writing for each occasion waives its right to receive interest under this clause.

**5.6 Chargeback Fee:** Windcave may, at its discretion, charge you a \$25.00 fee for each individual Chargeback you incur. A "Chargeback" is defined as the return of funds to your consumer, initiated by an issuing bank of the instrument used by the consumer to settle a debt.

## 6 Reserved

---

**Section intentionally blank.**

## 7 Termination

---

**7.1 Windcave's Rights:** Windcave may terminate this Agreement, or any part of it, or EFTPOS Services Agreement, if you are a party to that agreement, at any time by notice to you, with or without cause, including, but without limiting this right of termination, if you become insolvent or bankrupt, liquidation or bankruptcy commences, you breach this Agreement, you act fraudulently or facilitate fraudulent activity, or there is a change in your ownership or control, or you have been non-compliant with PCI DSS.

**7.2 Your Termination Rights:** Subject to clause 7.4, you may, with or without cause, terminate either:

- (a) the whole Agreement; or
  - (b) the application of a Supplementary Schedule if you no longer wish to process the particular types of transactions to which the Supplementary Schedule applies;
- by giving Windcave ninety (90) days prior written notice, provided that if you terminate the Agreement or any Supplementary Schedule within the Initial Term or any Subsequent Term, you will be required to pay the termination fee in accordance with clause 8, except in the circumstances listed in clause 7.5.

**7.3 Deemed Termination:** You will be deemed to have terminated this Agreement if you:

- (a) commence processing any Card Sales Transaction with another supplier and cease processing with Windcave;
- (b) cease to process one or more of the Cards chosen on the Signature Section, or a type of Card Sales Transaction specified on the Signature Section, unless consented to by Windcave;
- (c) commence processing a type of Card Sales Transaction listed on the Signature Section without prior consent from Windcave; or
- (d) process such volume of transactions (including electronic or manual transactions) under this Agreement or take any other actions which, in Windcave's opinion, indicate that you intend to terminate this Agreement (in whole or part) or intend to commence processing with another supplier.

**7.4 Right to Terminate on Increase of Rate:** If Windcave increases the Rate in accordance with clause 5.1, you object to that increase in writing to Windcave and:

- (a) such increase is not due to you failing to achieve the agreed average transaction size (as specified on the Signature Section initially); or
- (b) if you have chosen the EFTPOS processing method in the Signature Section and such increase is not due to you increasing your percentage number of manual transactions so that the number of manual transactions (paper or PAN

Entry) exceed 5% of the total number of EFTPOS transactions you process in any three (3) month period you may terminate this Agreement by giving Windcave one (1) month's prior written notice.

**7.5 Circumstances in Which No Termination Fee Payable:** If, at any time Windcave is satisfied, in its discretion that this Agreement or any part of it, is terminated due to:

- (a) any event which requires notice to be given to Windcave under clause 4.2(e)(i);
- (b) you becoming insolvent or bankrupt or you are liquidated;
- (c) your business ceasing to operate;
- (d) you terminating this Agreement under clause 7.4; or
- (e) you no longer wishing to process a particular type of transaction and you have not processed, or will not in the future process, that type of transaction with another supplier;

then you will not be required to pay any termination fee payable under clause 8.

**7.6 Consequences of Termination:** On the termination of this Agreement, you must immediately:

- (a) return all Windcave Products to Windcave;
- (b) cease to use or display any Mark;
- (c) immediately pay Windcave any outstanding fees, charges, costs, liabilities or other amounts payable by you under this Agreement including the MSF; and
- (d) comply with any other reasonable directions from Windcave.

**7.7 Other Rights Not Affected:** The termination of this Agreement shall not affect any right held, or obligation incurred, by either Windcave or you prior to the date of termination. You agree that if you give notice to terminate this Agreement under clauses 7.2 or 7.4 you will continue to comply with this Agreement during the notice period until the date of termination including your continued liability for Chargebacks under clause 4.9.

## 8 Termination Fee

**8.1 Termination Fee Payable:** Subject to clause 7.5, if you terminate, or are deemed to have terminated, this Agreement, or any part of it, before the expiry of the Initial Term or any Subsequent Term (other than as a direct result of Windcave breaching this Agreement), or Windcave terminates this Agreement because you have breached this Agreement, you will immediately pay to Windcave (in addition to any other amounts which are payable by you under this Agreement) by way of liquidated damages an amount per Facility which is equal to the greater of:

- (a) (.25 x AMSF) x T; or
- (b) \$400.00, where:

AMSF is the average of the six (6) most recent MSF payments per Facility (excluding any month where Minimum Monthly MSF payments are made) which were (or are) payable by you (to be determined by Windcave), or if fewer than six (6) MSF payments have been (or are then) payable by you, the average of all MSF payments per Facility (excluding any month where Minimum Monthly MSF payments are made) which were (or are) payable by you (to be determined by Windcave); and T is either the number of months remaining per Facility before the end of the Initial Term or the Subsequent Term (as the case may be).

## 9 Acknowledgement

**9.1 Acknowledgement:** You acknowledge for all purposes (including the Consumer Guarantees Act 1993) that you enter, and hold yourself out as entering, into this Agreement for the purpose of a

business. You acknowledge that Windcave does not give any warranty, representation or assurance, whether express or implied, as to the creditworthiness of a Cardholder or the accuracy or reliability of the Card Payment System.

## 10 Marks/Advertising

**10.1 Displaying Marks/Advertising:** You must display the advertising and/or promotional materials which Windcave may direct you to display, and you must do so in accordance with the directions of Windcave.

**10.2 Prior Authorisation:** If you wish to use promotional materials and/or advertisements which show, use or include a Mark, you must first obtain Windcave's written approval to the advertising and/or material.

## 11 Indemnities

**11.1 Limitation of Liability:** Without limiting clause 11.2, Windcave has no liability to you for any loss, cost, damage, expense or liability suffered or incurred by you, whether directly or indirectly as a result of:

- (a) any failure by Windcave to perform any of its obligations under this Agreement where, in the opinion of Windcave, that failure is wholly or partly a result of:
  - (i) a failure of the Card Payment System;
  - (ii) any act or omission of you, a Cardholder, Your Bank, Visa, MasterCard; or
  - (iii) any other event or circumstance outside Windcave's direct control; or
- (b) the failure of, or a mistake, error or omission made by, the Card Payment System.

In addition to greater limitations on Windcave's liability that may be provided elsewhere, and to the extent permitted by law, any liability of Windcave under this Agreement, whether to you or any other party, will not exceed, in the aggregate, an amount equal to the lesser of (a) the fees paid by you to Windcave during the last three (3) months, exclusive of fees and variable costs incurred by Windcave to process Transactions, such as interchange costs, assessments and fees imposed by a third party or (b) **fifty thousand dollars (\$50,000).**

**11.2 No Liability for Lost Profits:** Without limiting clause 11.1, Windcave has no liability to you for any loss of business or profits, or for any other consequential loss, however arising as a result of any failure by Windcave to perform any of its obligations under this Agreement.

**11.3 Indemnity:** You must indemnify Windcave against any loss, cost, damage, expense or liability suffered or incurred by Windcave as a result (whether directly, indirectly or consequentially) of:

- (a) the execution of this Agreement, any agreement or understanding related to this Agreement, or your failure to comply with any of these;
- (b) any incorrect or misleading information supplied to Windcave by you or any information withheld from Windcave by you;
- (c) any other act of, or omission by, you or any of your employees, officers or Agents whatsoever (including, for the avoidance of doubt, the completion of a Card Sales Transaction, the use of a Terminal, the completion of a Sales Voucher or Credit Voucher and/or the use of any Ancillary Product and/or Mark);

- (d) any action taken by Windcave, Visa and/or MasterCard as a result of any act of, or omission by, you or any of your employees, officers or Agents; or
- (e) any dispute between any or all of the Cardholder, Windcave and you.

## 12 Combination and Set Off

---

**12.1 Authorisation to Set Off:** If you have any account with Windcave (including Your Account, and regardless of whether that account is held by you alone or together with any other person) (a "Windcave Account"), you authorise Windcave to:

- (a) transfer all or any part of the balance standing to the credit of any Windcave Account to the credit of another Windcave Account (if any);
- (b) apply all or part of the balance standing to the credit of any Windcave Account in or towards satisfaction of any amount payable by you to Windcave; and/or
- (c) apply any amount owed to you by Windcave in or towards satisfaction of any amount payable by you to Windcave and Windcave is entitled to bring forward the date for payment of any amount owing by it to you in order to do this, in each case, without giving you (or any other person) any prior notice or demand. This clause 12.1 does not prejudice, and is in addition to, any other right of set off, combination of accounts, lien or other similar or related right to which Windcave is, or may at any time be, entitled.

## 13 Variations

---

**13.1 Windcave May Vary Agreement:** Windcave may, at any time, vary any term or condition of this Agreement by notice to you in whatever form, and given in whatever manner, as Windcave thinks appropriate and any such variation will take effect fourteen (14) days after the date that Windcave gives that notice. You may not vary this Agreement unless in writing and agreed with Windcave.

**13.2 Changing Your Account:** If, at any time, you wish to change the bank which is Your Bank, or the account which is Your Account, you may do so by giving Windcave at least seven (7) days' prior written notice

**13.3 Obligations on Changing Account:** If you change the bank which is Your Bank, or the account which is Your Account, then you must immediately provide Windcave with all necessary details of that account and a new authority to direct debit Your Account (as changed).

## 14 Agent

---

**14.1 Windcave May Use Agents:** All or any of Windcave's functions, rights and obligations under this Agreement may be carried out by its duly authorised Agents. Any such Agent will not act in its personal capacity.

## 15 Disputes

---

**15.1 Resolving Disputes:** Where any dispute between you and Windcave arises out of, or in connection with, this Agreement, you agree to meet with Windcave to attempt to resolve the dispute by good faith negotiation. If, after a period of not less than five (5) Business Days, those negotiations are unsuccessful, either you or Windcave may refer the dispute to arbitration in accordance with the Arbitration Act 1996, except that the arbitrator shall be a

person agreed by you and Windcave or, in the absence of any agreement by them, a person appointed by the president or vice-president of the New Zealand Law Society. This clause does not limit or affect in any way:

- (a) any right, power or discretion of Windcave specified in this Agreement including, but not limited to, Windcave's right to terminate this Agreement at any time, with or without cause; or
- (b) Windcave's right to apply to a court for any interim or preliminary relief in respect of a dispute.

## 16 Notices

---

**16.1 Form of Notice:** Unless specified otherwise, every notice required to be given under this Agreement must be given in writing and may be given by email (each subject to clause 16.3), personal delivery or prepaid letter dispatched to the physical address or postal address (as the case may be) most recently nominated by the party for whom the notice is intended for the receipt of notices.

**16.2 Receipt of Notice:** If a notice is dispatched pursuant to this Agreement:

- (a) by post, it shall be deemed to have been given after the expiry of seven (7) Business Days, except for notification of a Chargeback. Chargeback amounts will be debited to your account two (2) days after notification has been posted. Your right under this Agreement to query any Chargeback amount is not restricted by this clause;
- (b) by hand, it shall be deemed to have been given on the Business Day on which it was actually delivered, provided that if it was delivered after 4pm, or on a day which was not a Business Day, it will be deemed to have been given on the next Business Day, or
- (c) in the case of delivery by email:
  - (i) in the case of emails sent by you to Windcave, it shall be deemed to have been given upon receipt by you of a return email from Windcave acknowledging receipt of such email (for the avoidance of doubt, an automatic or system generated acknowledgement from Windcave will not be considered a return email for the purposes of acknowledgement of receipt notice); or
  - (ii) in the case of emails from Windcave to you, it shall be deemed to be given at the time specified in the email as the time the email was sent, provided that, in each case, if such deemed time of receipt is after 4pm, or on a day which is not a Business Day, then the notice will be deemed to have been given on the next Business Day. If any notice under this Agreement is given by email and such notice involves a value instruction over \$10,000, Windcave may decline to act on such notice and/or may require you to sign an indemnity before accepting any such notice.

## 17 Assignment

---

**17.1 Windcave May Assign:** Windcave may assign and transfer all or any of its rights and obligations under this Agreement to any person or persons;

**17.2 You May Not Assign:** You may not assign or transfer any rights or obligations under this Agreement without Windcave's prior written consent.

## 18 Windcave's Discretion and Powers

---

**18.1 Other Rights:** Unless this Agreement states otherwise, any power, authority, decision, determination and/or discretion which Windcave has by law and/or under this Agreement can be exercised, or not exercised, by Windcave in its absolute and uncontrolled discretion, at the time or times, upon the terms and conditions, and in the manners, which Windcave decides. The rights, powers and remedies provided to Windcave under this Agreement are in addition to, and not exclusive of, any rights, powers or remedies provided by law.

**18.2 Time:** Time shall be of the essence in respect of the performance by you of your obligations under this Agreement. However, if Windcave fails to exercise, or delays in exercising, any right, power or remedy under this Agreement, it will not have, and will not be deemed to have, waived that power, right or remedy. Further, any single or partial exercise of a right, power or remedy by Windcave shall not preclude any other, or further, exercise of that power, right or remedy, or any other power, right or remedy.

### 18.3 Anti-Money Laundering:

- (a) You agree that we may, in our sole and absolute discretion:
  - (i) delay, block or refuse to process any Transaction;
  - (ii) delay, block or refuse to settle any Transaction; or
  - (iii) refuse to perform any one or more of our obligations under the Agreement;

without incurring any liability, if we suspect, for any reason, that:

1. an action we are required or requested to take under the Agreement;
2. our involvement in any Transaction that is any way connected with the Agreement; or
3. our performance of any service for any person in connection with the Agreement;

might in any way cause us:

- (a) to breach any Law, regulation or other legal prohibition of any place or jurisdiction (including a foreign place or jurisdiction);
- (b) to deal in any way with any person (natural, corporate or governmental) that is sanctioned, or is connected in any way to any person that is sanctioned, under economic and trade sanctions imposed by the United Nations, the European Union or any country;
- (c) to breach any sanction of any kind imposed by any country (including any sanction that supports a decision or resolution of the United Nations Security Council);
- (d) to deal in any way with any person (natural, corporate or governmental) that has been listed or named by any government, or independent authority (such as the United Nations or the European Union), as a person who is in any way suspected of being involved (or potentially involved) in terrorism or in any activities connected with terrorism; or
- (e) to be involved (whether directly or indirectly) in any Transaction which involves the proceeds of unlawful conduct or which involves proceeds which might be applied for the purposes of

unlawful conduct in New Zealand, Australia or any other country.

For the purposes of this clause, the circumstances listed in paragraph (a) above are collectively described as "unlawful acts".

- (b) You must provide all information to us which we reasonably require in order:
  - (i) to manage anti-money laundering, counter-terrorism financing and economic and trade sanctions risk;
  - (ii) to comply with any Laws, regulations, or other prohibitions that may be applicable to us with respect to any Transaction, requested action or obligation applicable to us; and/or
  - (iii) to avoid involvement in any unlawful act.
- (c) You warrant and undertake to us that you will not request us to take any action, or to perform any obligation, in connection with the Agreement that might cause us to be involved in any unlawful act on our part. Should you become aware that we might become involved in an unlawful act in connection with the Agreement, you must immediately tell us of the fact or circumstance that might cause us to be at risk or have involvement in an unlawful act. Should you become aware that we have become involved in an unlawful act, as a result of our performance of any action or obligation in connection with the Agreement, you must immediately tell us of the facts or circumstances that have caused this to occur.
- (d) You agree that we may disclose any information concerning you or any Transaction to any Law enforcement agency or court or any relevant authority where required to do so under any Law or regulation (including a Law or regulation of a foreign place or jurisdiction) or where we have a reasonable belief that the Transaction may contravene that Law or regulation, and we will not incur any liability to you as a result of that action.

## 19 GST

---

**19.1 Subject to GST:** All fees, costs and charges payable pursuant to this Agreement will be charged plus GST (if any).

## 20 Termination and Liquidation

---

**20.1 Right to Freeze and Hold Funds:** In the event of termination or liquidation of your business, Windcave has the right to freeze and hold funds to cover outstanding costs and chargebacks.

## 21 Illegal Transactions

---

**21.1 Illegal Transaction Costs:** You agree to be liable for all costs related to illegal transactions including any investigations required.

## 22 Miscellaneous

---

**22.1 Illegality Etc.:** If, at any time, any part of this Agreement is, or becomes, illegal, invalid, or unenforceable, it will not affect the enforceability of the provisions, or the remaining provisions (as the case may be), of this Agreement.

**22.2 No Waiver Unless in Writing:** Windcave will not be deemed to have waived any provision of this Agreement unless that waiver is in writing and is signed by Windcave, or an authorised officer of Windcave. Any such waiver will apply to, and operate only in, a particular dealing or matter.

- 22.3 Entire Agreement:** This Agreement represents the entire agreement between Windcave and you in respect of the matters to which it relates. You acknowledge that no collateral representations, warranties, or undertakings of any nature, whether oral or written, have been or will be given by Windcave in respect of the matters to which this Agreement relates;
- 22.4 Survival:** Your obligations under clauses 4.3(e), (f), (g), (h), (i), 4.5, 4.6 (a),(b) 4.8, 4.9, 4.10,4.13, 4.16, 5.2, 5.5, 8.1, 11.3, 12.1 and 15.1 and Windcave's rights under 4.16, 4.18, 11.1, 11.2 and 12.1 survive the termination of this agreement.

## 23 Governing Law

- 23.1 New Zealand Law Governs:** This Agreement is to be governed by, and construed in accordance with, the laws of New Zealand. The parties submit to the jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.

## 24 Definitions and Interpretation

- 24.1 Definitions:** In this Agreement, unless the context otherwise requires:

**"the Agreement" or "this Agreement"** means all of the documents listed in clause 1.1.

**"Agents"** means any third party institution engaged by you to assist you in performing your business activities. Such Agent may store, process, transmit or have access to Card or Card Sales Transaction information. This term includes but is not restricted to Third Party Processors, gateway provider/Data Processors or Data Storage Entities.

**"Association"** means any industry Association that Windcave determines in its discretion is an Association for the purposes of this Agreement.

**"Acquiring Charge"** means the amount charged by Windcave for Visa and/or MasterCard Card Sales Transactions in addition to the Interchange Fee.

**"Authorisation"** means a request that is sent to the Cardholder's bank for confirmation that the Cardholder has sufficient credit available and the account is in good order to be able to complete the Card Sales Transaction.

**"Authorisation Log"** means a report that records the Authorisation requests and responses that have been processed by the point of sale system.

**"Blended MSF"** means a single blended MSF for processing all Visa and MasterCard Card Sales Transactions.

**"Business Day"** means:

- a) in respect of an act which is required to be done under this Agreement, a day (other than a Saturday or a Sunday) on which Windcave is open for business in the place where, or the place nearest to where, the act is required to be done; and
- b) in respect of a notice, a day (other than a Saturday or a Sunday) on which Windcave is open for business in the place where, or the place nearest to where, the notice is required to be received.

**"Card" or "Nominated Card"** means each of a Visa Card, a MasterCard Card, a Debit Card, or any other Card or payment instrument as selected by you in the Signature Section and authorised by us for the purposes of this Agreement.

**"Cardholder"** is a person who has been issued a Card.

**"Card Issuer"** means a bank or other institution that has a licence agreement with a Card Scheme to issue one or more Cards. "Card Number" means the primary Cardholder account number that is

assigned to a Card and is embossed on the Card plastic. The Cardholder account number will appear in a truncated format on the Transaction Receipt when a transaction is conducted.

**"Card Scheme"** means Visa, or MasterCard, or any other scheme established to manage and establish standards and procedures for the issuance and acceptance of Cards and the settlement of Transactions, as selected on the Signature Section or later accepted for use by you in writing by Windcave following a request by you.

**"Card Not Present Transaction"** means the types of transactions listed in clause A(c) of Card Not Present Supplementary Schedule.

**"Card Payment System"** means:

- a) Windcave's systems (including its processing systems); and
- b) any system of any agent of Windcave or any other third party; and
- c) any service provided by any agent of Windcave or any other third party, which Windcave uses, engages, relies on, or requires, in order to fully or partly comply with all or any of its obligations under this Agreement, as determined by Windcave, in its discretion.

**"Card Sales Transaction"** means a transaction where a Visa Card, or a MasterCard Card is used to pay you for goods and/or services on credit and includes the amount of any Surcharge Fee applied to the Card Sales Transaction.

**"Cardholder Data"** means either of any information, document or an account number relating to a Cardholder, a Cardholder's nominated Card Number or a Card Sales Transaction obtained electronically or by paper method.

**"Cardholder Information"** means Cardholder or Card Sales Transaction information obtained by your business through the processing of Card Sales Transactions.

**"Cardholder's Nominated Account"** means any account which at the Cardholder's request, has been approved by a Card Issuer as an account through which a Transaction may be made.

**"Chargeback"** means when a previously completed and settled sale is reversed and returned to Your Account. The validity of the sale as detailed in the Card Sales Transaction relating to it, may have been questioned directly by the Cardholder or their issuing bank. A Chargeback may arise over a dispute between the Merchant and the Cardholder, an error by the Merchant in processing the sale or fraudulent activity in regards to the sale.

**"Credit Voucher"** means a voucher generated by you as a refund for goods and/or services purchased from you by a Cardholder and paid for via a Card Sales Transaction.

**"Data Breach"** means any event whereby your business, or any Agent facilitating the transmission, storage or acceptance of credit card payments, suspects or has knowledge of unauthorised access to confidential card payment details.

**"Data Processor"** an entity that is engaged to provide data processing services on behalf of its clients, also known as an Agent.

**"Data Storage Entity (DSE)"** means an entity other than a Member or Third Party Processor that stores or has access to Cardholder Data. Examples of DSEs include, but are not limited to Web Hosting companies, payment gateways, Terminal Drivers and Processors.

**"Debit Card"** means any card issued by a financial institution used by a Cardholder to access a cheque or savings account and includes Visa and MasterCard debit and pre-paid products where the transaction is treated as a domestic Electronic Card Sales Transaction, but does not include International Debit Card.

**"Debit Transaction"** means a Transaction where payment is made by debiting funds in a cheque or savings account which is authorised for access by the Cardholder's Nominated Account.

**"EFTPOS Services Agreement"** means the Agreement between Paymark Limited, Windcave and you for the supply of EFTPOS services.

**"EFTPOS Terminal"** means any electronic device or equipment (including where applicable a portable electronic device or equipment (such as cables and peripherals) but not including an automatic telling machine), for processing Transactions using Cards and for initiating the credit or debit of funds to facilitate the settlement of those Transactions.

**"Electronic Card Sales Transaction"** means a Card Sales Transaction which is effected through a Terminal or some other electronic means which Windcave has, at any time, approved for the purposes of this definition.

**"Electronic Off-Line Payment Limit"** means the maximum amount set by us that you are allowed to process a Transaction for and/or the maximum number of Transactions you can process using an EFTPOS Terminal with Electronic Off-Line Transaction functionality.

**"Electronic Off-Line Transaction"** means a Transaction made using the automated procedures within the EFTPOS Terminal to capture and store the Transaction for subsequent dispatch to us and authorised manually at your discretion, subject to the terms and conditions of the Agreement.

**"EMV"** means Europay, MasterCard, Visa Chip Card global processing standards for chip card transactions, as detailed in the Merchant Operating Guide.

**"Facility"** means a type of Cards Sales Transaction as specified by an individual Merchant Number set out on the Signature Section.

**"Forensic Review and Analysis"** means a review by Windcave or an authorised representative of Windcave after a suspected or known Data Breach has occurred. This review may require physical site access and access to all storage and transmission systems. Cost of this analysis and any subsequent fines imposed by the Card Scheme administrators may be passed on to you.

**"Incident Response Plan"** means a pre-defined set of procedures and actions to be initiated by you in the event that a Data Breach has occurred, or is suspected to have occurred. The plan is aimed at minimising the impact and disruption caused by a Data Breach by defining a set of clear and effective procedures to be followed. Failure to effectively report and manage a Data Breach can result in fines from the Card Schemes. Refer to the guide for meeting Payment Card Industry Data Security Standards and Merchant Operating Guide for further information.

**"Initial Term"** means the period of thirty six (36) months from the Commencement Date.

**"Interchange Fee"** means the fee that Windcave or Your Bank pays to the issuers of Card Scheme Cards for Transactions accepted at the Merchant facility when a Card is used (except where the Card Sales Transaction results from the presentation of a New Zealand issued Card at a New Zealand EFTPOS Terminal). This is a variable fee depending on the:

- a) nature of the transaction;
- b) card type, and
- c) processing environment of the transaction.

**"International Debit Card"** means a Debit Card issued outside of New Zealand.

**"Mail or Telephone Order Transaction"** is a transaction where a Cardholder orders goods or services from you by telephone, mail, or other means of telecommunication (excluding Electronic Commerce), and neither the Card nor the Cardholder is physically present.

**"Manual Card Sales Transaction"** means a Card Sales Transaction which is not effected through a Terminal.

**"Mark"** means, in respect of Visa and MasterCard, any trademark, logotype, symbol, hologram, design or other similar distinguishing emblem used by Visa or MasterCard respectively.

**"MasterCard"** means MasterCard International Inc., any of its successors or assigns, and any of its related companies or related bodies corporate.

**"MasterCard Card"** means a credit card issued by an entity pursuant to, and in accordance with, a licence granted to the entity by MasterCard and which bears:

- a) a red circle intersecting an ochre circle;
- b) the word "MasterCard"; and
- c) the hologram, used by MasterCard as its symbol, which shows the image of two intersecting globes, and/or such other words, letters, symbols, numbers, characters, logotypes, emblems, designs and/or holograms of which Windcave may advise you for the purposes of this definition.

**"Member"** means an entity that is a Member of MasterCard or Visa.

**"Member Service Provider (MSP)"** means a non-member (not a Member of MasterCard or Visa) that is registered by MasterCard International Corporation as an MSP to provide program services to a Member, or any Member that is required to register in the Corporation's sole discretion and has been registered as an MSP to provide Third Party Processor Program Services to another Member.

**"Merchant"** means the entity or person names as the other party to this Agreement in the Signature Section and "you" and "your" have corresponding meaning.

**"Merchant Operating Guide"** means the document entitled "Merchant Operating Guide" prepared in respect of the Cards and issued to you by Windcave and any other document which Windcave, at any time, notifies you falls within the ambit of this definition, as the same may be issued, re-issued and/or amended and a reference to the "Merchant Operating Guide" shall be construed as a reference to all such documents.

**"Merchant Services"** means the services provided to you as specified on the Signature Section.

**"MSF"** means the sum of the Interchange Fee and Acquiring Charges payable by you to Windcave monthly pursuant to clause 5.2, as calculated under clause 5.3.

**"Minimum Monthly MSF"** means the Minimum Monthly MSF for a transaction type that Windcave advises you will be the minimum fee payable under this Agreement. Initially, the Minimum Monthly MSF for a transaction type is the amount specified as such on the Signature Section.

**"Nominated Card Scheme"** means any scheme established to manage and establish standards and procedures for the issuance and acceptance of Nominated Cards and the settlement of Transactions and includes any other payment industry body notified to you by us from time to time.

**"Nominated Card Scheme Regulations"** means any standards, procedures, rules, regulations, programmes or requirements of, or issued by, a Nominated Card Scheme.

**"Nominated Settlement Bank Account"** means the bank account you ask us to pay your settlements

**"PAN Entry"** is a credit card sales transaction where the credit card account number is manually entered into the EFTPOS Terminal or some other electronic means which Windcave has approved.

**"Payment Card Industry Data Security Standards (PCI DSS)"** means global standards developed by leading payment schemes (including MasterCard, Visa, Diners, AMEX, Discover Card, and JCB) to provide guidelines for secure storage and transmission of card account information. Further information can be obtained by visiting [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org).

**"PCI DSS"** means Payment Card Industry.

**"PIN"** means the Personal Identification Number selected by a Cardholder, which when used in conjunction with a Nominated Card, enables the Cardholder to make electronic Transactions.

**"Preferential Rate"** means any discounted Preferential Rate determined by Windcave in its discretion.

**"Prepayment"** means a payment that is made for future delivery of goods or services. This is also known as 'delayed delivery', the payment is made up-front, but the goods or services are not delivered until a later date.

**"Prepayment merchant"** means a merchant that accepts payments for goods or services that will be delivered in full at a future date.

**"Prepayment merchant category"** means merchant types listed below and such other Merchant types that Windcave may in its discretion designate from time to time, that is:

- a) Travel Agents and Tour Operators –Prepaid tour packages on behalf of multiple merchants (airline travel, cruise line travel, hotel accommodations, car hire);
- b) Airlines –Prepaid airline fare where the ticket is issued but the flight has not taken place;
- c) Hotels and accommodation providers –Advance deposits;
- d) Cruise Lines –Advance deposits or itineraries paid prior to sailing;
- e) Electronic Retailers –Prepaid extended warranties;
- f) Furniture Companies –Delayed delivery transactions for future, or made-to-order delivered goods;
- g) Insurance Companies –Prepaid insurance policies;
- h) Health Clubs –Prepaid use of facilities and services;
- i) Internet Sales –Prepaid products for future delivery and software or computer warranties.

**"Prepayment Limit Agreement"** means an agreement setting the maximum amount of Prepayment sales Windcave allows you to have, and which may include additional conditions on your acceptance of Prepayment sales.

**"Rate"** means the Rate that Windcave advises you will be used to calculate the MSF and, where applicable, references to the Rate will be deemed to include references to the Preferential Rate.

**"Refund"** means, in respect of a sales Transaction, the reversal in accordance with the Merchant Operating Guide of that sales Transaction.

**"Signature Section"** means the Merchant service detail/ application form attached to the front of this Agreement and signed by you and Windcave, which sets out, amongst other things, the types of Card Sales Transactions you will process and the details of the Merchant Services that Windcave will provide you with.

**"Subsequent Term"** means each further term of thirty six (36) months for which this Agreement extends pursuant to clause 2.3.

**"Supplementary Schedule"** means further terms and conditions attached to this Agreement (if applicable) and applying to the Merchant Services detailed on the Signature Section.

**"Surcharge Fee"** means a fee that you may apply to a Card Sales Transaction, for acceptance of a Visa or MasterCard card for payment, which fee is not applied when payment is made via other payment mechanisms. A Surcharge Fee may be applied to some or all the branded Cards of a Card Scheme.

**"Terminal"** means a device which:

- a) facilitates the payment of goods and/or services by the electronic transfer of funds between the bank accounts of the buyer and seller at the time at which the goods and/or services are sold; and
- b) is approved by Windcave as a "Terminal" for the purposes of this Agreement; or
- c) any other device which is approved by Windcave as a "Terminal" for the purposes of this Agreement.

**"Terminal Drivers and Processors"** means entities that are engaged to provide terminal processing services to its clients.

**"Terminal Equipment"** means electronic terminal hardware devices or equipment that are provided to accept and process transactions on your behalf.

**"Third Party Processor (TPP)"** means any business that assists in the processing of Cardholder Data on your behalf.

**"Transaction"** includes a sales transaction (being the supply of goods or services or both), refund transaction or cash transaction in which a Card or card number of a Card is used and which is processed by you manually or electronically.

**"Transaction Receipt"** means an electronic or paper record of a Card Sales Transaction (or a copy) generated at the point of sale. Also known as a Transaction Record.

**"Transaction Record"** means the record of a Card transaction, a copy of which is kept by you and a copy to be provided to the Cardholder, recording the details of the transaction and includes a Sales Voucher.

**"Transaction Report"** means a report that provides detailed information on transactions that have been processed through your payment system.

**"Triple Data Encryption Standard (3DES)"** means a strong form of data security technology that uses advanced data encryption to protect card transaction information, as explained in the Merchant Operating Guide.

**"Unblended MSF"** means the MSF charged for Visa Card transactions is separated from the MSF charged for MasterCard card transactions.

**"Unbundled MSF"** means the MSF is unbundled so you are charged the Interchange Fee applicable for each Visa and MasterCard Card Sales Transaction, plus an Acquiring Charge. In other words, the actual MSF you end up paying depends on the mix of transactions accepted through your Merchant facility.

**"Valid"** means:

- a) in respect of a Sales Voucher, a Sales Voucher which has been completed in accordance with this Agreement, does not breach any provision of this Agreement, and contains any other information which, at any time, Windcave notifies you should be recorded on it;
- b) in respect of a Card Sales Transaction, a Card Sales Transaction which has been completed in accordance with this Agreement and does not breach any provision of this Agreement and **"Valid Electronic Card Sales Transaction"** and **"Valid Manual Card Sales Transaction"** have corresponding meanings, and, in each such instance, **"Invalid"** shall have a corresponding meaning.

**"Visa"** means Visa International Inc., any of its successors or assigns, and any of its related companies or related bodies corporate.

**"Visa Card"** means a credit card issued by an entity pursuant to, and in accordance with, a licence granted to the entity by Visa and which bears:

- a) the Visa Flag Symbol or Visa Brand Mark;
- b) the word "Visa"; and
- c) the hologram, used by Visa as its symbol, which shows the image of a dove, and/or such other words, letters, symbols, numbers, characters, logotypes, emblems, designs and/or holograms of which Windcave may advise you for the purposes of this definition.

**"Windcave"** means Windcave New Zealand Limited, a New Zealand entity incorporated under the Companies Act 1993, with New Zealand business number 9429042240655, and having its principal place of business in New Zealand at 33 Wilkinson Road, Ellerslie, Auckland, and includes its successors and assigns.

**"Windcave Products"** means any product, stationery or equipment supplied to you by Windcave, and includes:

- a) any manually operated equipment used to imprint a Sales Voucher and/or a Credit Voucher with the information which is embossed on a Card;
- b) any unused stationery intended for the generation of Sales Vouchers or Credit Vouchers;
- c) any advertising or promotional material including branding logos which Windcave may provide you with from time to time;
- d) any poster, sign, sticker, notice, or promotional material, in connection with the Cards or any Card; and
- e) any operating guide, manual and booklet in connection with the Cards or any Card.

**"you" "your"** means the entity or person named as the other party to this Agreement on the Signature Section.

**"Your Account"** means the account held with a Bank which you have most recently advised Windcave is the account to which amounts should, from time to time, be debited and credited pursuant to, and in accordance with, this Agreement.

**"Your Bank"** means the registered bank (as defined in the Reserve Bank of New Zealand Act 1989) most recently nominated by you as the bank with which you will maintain an account to which amounts can, from time to time, be debited and credited pursuant to, and in accordance with, this Agreement.

**24.2 Interpretation:** In this Agreement, unless the context otherwise requires:

- a) the singular includes the plural and vice versa;
- b) words denoting a person include a company, corporation, firm, joint venture, unincorporated body, governmental agency, Association or partnership and includes any successors, executors and assigns;
- c) references to clauses are references to clauses of these general terms and conditions or a Supplementary Schedule unless specified otherwise;
- d) references to one gender include the others;
- e) section headings have been inserted for convenience only and should be ignored in construing this Agreement;
- f) a company is related to another company or body corporate if the company would be related to that company or body corporate pursuant to section 2(3) of the Companies Act 1993, assuming that each reference to a "company" in section 2(3) of the Companies Act 1993 included a reference to a body corporate;
- g) a body corporate is related to another company or body corporate if the company would be related to that company or body corporate pursuant to section 2(3) of the Companies Act 1993, assuming that each reference to a "company" in section 2(3) of the Companies Act 1993 included a reference to a body corporate;
- h) any act or thing which may be or which is required to be done at any time, includes reference to it being done from time to time;
- i) any reference to "including" shall be deemed to include reference to "without limitation" immediately thereafter; and reference to any document includes such document as may be amended, modified or supplemented from time to time in accordance with this Agreement

**SCHEDULE I**  
**CARD NOT PRESENT TRANSACTIONS -**  
**SUPPLEMENTARY SCHEDULE**

**A. Application**

---

- (a) The terms and conditions of this Supplementary Schedule apply to you if you have selected to process any Card Not Present Transactions on the Signature Section and Windcave has approved that Signature Section.
- (b) This Supplementary Schedule forms part of, and is subject to the general terms and conditions set out in the Agreement.
- (c) Card Not Present Transactions involve transactions where the Cardholder and the Card are not present when processing a transaction, and cover the following types of transactions:
  - (i) Mail or Telephone Order Transactions;
  - (ii) Electronic Commerce Transactions;
  - (iii) Recurring Transactions;
  - (iv) Instalment Transactions;
  - (v) Delayed Delivery Transactions;
  - (vi) PAN Entry Transactions.
- (d) Windcave must give you its prior written approval for each of the above transactions before you are able to process that transaction. For the avoidance of doubt, that written approval is given by Windcave if you select the transaction type in the Signature Section and Windcave signs that Signature Section.
- (e) At any time, Windcave may cease to allow you to process any one or more of the transaction types in (c) above by notice to you. You must immediately cease to process any transaction type specified in that notice upon receiving that notice.

**B. Acceptance of Risk**

---

- (a) **You accept risk:** By selecting to process Card Not Present Transactions you accept the increased risk of processing transactions where there is no physical credit card and the Cardholders identity or authority may be later called into question. You specifically acknowledge and agree that:
  - (i) there is a much greater risk that a Card is being used fraudulently, or is in some other way invalid;
  - (ii) you accept all risks associated with processing a Card Not Present Transaction including, but not limited to, all costs, fines or penalties imposed, loss, or liability incurred by you or any other person in relation to the processing of that transaction;
  - (iii) as with any other Card Sales Transaction, an authorisation approval and code provided by

Windcave of a Card Not Present Transaction does not in any way guarantee payment by Windcave for that transaction. Windcave will in no way be liable for any Chargeback, cost, fine or penalty imposed, loss or liability incurred by you or any person in processing that transaction;

(iv) where a Card Not Present Transaction has not been validly authorised by the Cardholder, or is in some other way invalid, the value of that transaction will be charged back to Your Account in accordance with clauses 4.9 and 4.10(d) of the Agreement; and

(v) you must maintain best practice risk management functions during and after the implementation of your Card Not Present facility. These functions should include at least:

- risk management procedures such as fraud control measures;
- policies and procedures for sensitive data storage that comply with PCI DSS;
- understanding of fraud and Chargeback risks and liabilities; and
- procedures for tracking and monitoring fraud allegations and losses.

**C. Completion of Transaction Record**

---

- (a) **Details for all Transaction Records:** The Transaction Record for all Card Not Present Transactions must contain the following information:
  - (i) Card account number;
  - (ii) Card expiry date;
  - (iii) Cardholder name;
  - (iv) transaction date and amount;
  - (v) authorisation code;
  - (vi) your business name and location;
  - (vii) description of merchandise or services; and
  - (viii) address for delivery of the goods or services (if applicable).
- (b) **Additional details for specific transaction types:** In addition to the details in clause C(a) above, you must record the following details on the Transaction Record for the transaction type specified:
  - (i) for Mail and/or Telephone Order Transactions, either "MO" (mail order) or "TO" (telephone order) legibly printed on the signature line of the Transaction Receipt;
  - (ii) for Electronic Commerce Transactions:
    1. your business name most recognisable to the Cardholder, such as:
      - your "doing business as" (DBA) name, as used on your website;

- your internet website address or “universal resource locator” (URL);
  - 2. customer service contact information including telephone country code and area code. If you deliver goods or services internationally, you must list both locally and internationally accessible telephone numbers;
  - 3. terms and conditions of sale, if these are restricted for Electronic Commerce Transactions;
  - 4. if a free trial is offered, the exact date the free trial ends;
  - 5. cancellation policies;
  - 6. the Cardholder's internet or email address;
- (iii) for Delayed Delivery Transactions:
1. the word “Deposit” on the Transaction Record for the first transaction payment; and
  2. the word “Balance” on the Transaction Record for the second transaction payment.
- (c) **Single Transaction Only:** For all Card Not Present Transactions you must include the total amount of goods and services purchased at the same time on a single Transaction Record. A transaction must not be divided (split) by using two or more Transaction Records except as provided under sections D and E of this Supplementary Schedule.
- (d) **Provision of Receipt:** For all Card Not Present Transactions you must provide a completed copy of the Transaction Record to the Cardholder at the time the purchased goods are delivered or services are performed.
- (e) **Delivery of Transaction Record:** For all Card Not Present Transactions you must not return the full credit card number to the Cardholder either online or on the Transaction Record. You may deliver the Transaction Record either:
- (i) electronically (e.g., email); or
  - (ii) on paper (e.g. hand-written or terminal-generated).
- (f) **Written Permission for Recurring Transactions:** For Recurring Transactions the Cardholder's written permission must be obtained in a format such as email, other electronic record, or in paper form prior to the commencement of the first Recurring Transaction, and must be retained by you for not less than 18 months after the last transaction with the relevant Cardholder and provided to Windcave upon request. Card payment details must not be accepted or transmitted via email.
- (g) **Retention and Inspection of Records:**
- (i) you agree to retain a copy of all Transaction Records for not less than eighteen (18) months from the date the transaction (or last transaction in the case of Recurring
- Transactions, Instalment Transactions or Delayed Delivery Transactions) was processed;
- (ii) Windcave has the right to request copies of the Transaction Records and any written permission obtained by you pursuant to section C(f) of this Supplementary Schedule at any time. If you are unable to supply the requested copies the transaction may be charged back to your Bank account in accordance with clause 4.10(d) of the general terms and conditions; and
- (iii) if discarding or destroying any Transaction Records after the time period for retaining them has passed, you must do so in a secure manner in accordance with clause 4.3(i) of the Agreement.

#### **D. Instalment Transactions**

---

- (a) Instalment Transactions may only be offered by you if you are authorised to process Mail or Telephone Order Transactions or Electronic Commerce Transactions. For Instalment Transactions, you may process greater than one Transaction Record for a single transaction. For all Instalment Transactions you must:
- (i) obtain prior authorisation for each payment instalment in an Instalment Transaction regardless of your authorised floor limit;
  - (ii) disclose in writing whether the instalment terms limit the goods or services that a Cardholder may purchase;
  - (iii) disclose in writing any delivery or handling charges and any applicable taxes;
  - (iv) inform a Cardholder not billed in New Zealand dollars that each instalment amount may vary due to currency conversion rate fluctuations;
  - (v) ensure that the sum of all instalment payments does not exceed the total price of the goods (excluding currency fluctuations if (iv) above applies);
  - (vi) not add finance charges to any instalment payments;
  - (vii) not deposit the first instalment payment until the date of despatch of the goods; and
  - (viii) deposit subsequent instalment payments at one of the following intervals:
    1. thirty (30) days or more;
    2. the monthly anniversary of the date of despatch (same day of each month); or
    3. any other interval agreed with the Cardholder.

#### **E. Delayed Delivery Transactions**

---

- (a) **Application:** Delayed Delivery Transactions may only be processed when the goods and/or services to be purchased, or part of them, are not available for delivery at the time of the original transaction request from the Cardholder. In such a case you may process two Transaction Records for a single transaction. The first transaction payment is the “deposit” and the second transaction payment is the payment of the “balance”.
- (b) **Single Payment:** If the Cardholder is made aware of the unavailability of the goods or services at the time of authorising the transaction and agrees, you may process one Transaction Record for the total amount of the sale.
- (c) **Authorisation:** For all Delayed Delivery Transactions you must obtain prior authorisation for each transaction payment on the day of each transaction payment.
- (d) **Depositing Receipts:**
  - (i) you may deposit the Transaction Record for payment of the delayed delivery deposit before delivery of the goods or services; and
  - (ii) you must not deposit the Transaction Record for payment of the balance payment before delivery of the goods or services.
- (e) **Retention of Deposit:** You may only retain the deposit and not deliver the goods or services if all the following conditions apply:
  - (i) you received a decline response to your authorisation request for the balance;
  - (ii) the balance was not paid by any other means; and
  - (iii) the Transaction Record clearly states that the deposit is non-refundable and that the Cardholder was advised of this condition of sale at the time of order.

#### **F. Electronic Commerce Transactions**

---

- (a) **Website Information:** Before accepting any Electronic Commerce Transaction over the internet you must ensure your website displays all of the following information:
  - (i) consumer data privacy policy;
  - (ii) security capabilities and policy for transmission of payment card details;
  - (iii) complete description of the goods or services offered;
  - (iv) return/refund policy;
  - (v) customer service contact, including email address, or telephone number;
  - (vi) transaction currency (e.g. New Zealand dollars);
  - (vii) export restrictions (if known);
  - (viii) delivery policy;
  - (ix) country of merchant's residence;
  - (x) cancellation policy;
- (b) **Merchant Responsibilities:** You must:
  - (xi) Merchant responsibilities in handling disputes;
  - (xii) Card Scheme brand marks for Cards accepted by you wherever payment options are presented; and
  - (xiii) Verified by Visa and MasterCard SecureCode brand marks on payment pages if participating in these authentication programs.
- (c) **Your Obligations:** To be able to process Electronic Commerce Transactions over the internet you must:
  - (i) maintain a relationship with an internet service provider at your own expense for the purpose of maintaining the website for customers and facilitating email communications;
  - (ii) ensure that your business name corresponds with the name of your website and the name that will appear on cardholder statements and as advised on the payment record;
  - (iii) provide us with reasonable access to view, monitor and audit the pages of your website;
  - (iv) protect your website payments page by Secure Sockets Layer or any other form of security method approved by us and state on your website payments page that the page is secured by Secure Sockets Layer (or, if appropriate, other form of security method approved by us);
  - (v) ensure all Electronic Commerce Transactions are captured and transmitted using a protected website payments page through a Windcave approved E-Commerce payment gateway. Card payment details must not be accepted or transmitted via email;
  - (vi) ensure it does not violate applicable laws governing the sale of prescription medicines, including controlled substances or other regulated products; and
  - (vii) advise us in writing at least ten (10) banking days prior to changing your:
    - internet address; or
    - email address; or
    - telephone number; or
    - website name; or
    - nature of business.
- (c) **Secure E-Commerce:** Windcave may, at its discretion, require you to support and use Windcave e-commerce products.

#### **G. Definitions**

---

**Definitions:** In this Supplementary Schedule, unless the context otherwise requires:

**“Cardholder Authentication”** is a means of verification performed by you of the person initiating an Electronic Commerce Transaction that they are an authorised

Cardholder of the credit card account. Verification is done using an approved payment authentication system such as Verified by Visa or MasterCard SecureCode.

**“Delayed Delivery Transaction”** is a single transaction where two separate transaction receipts may be completed. Delayed Delivery Transactions allow the Merchant to “split” the sale or process a single transaction for the full amount with Cardholder permission when stock is unavailable at the time of order.

**“Electronic Commerce Transaction”** is a transaction initiated by a Cardholder that has interacted with a Merchant via an open network such as the Internet. This includes online processing and encrypted order forms.

**“Instalment Transaction”** is a transaction in which the Cardholder is billed in monthly instalments until the total amount of the transaction has been repaid. Instalment Transactions allow the Merchant to offer the Cardholder a payment plan which has the option of spreading payments over an agreed upon time frame in agreed amounts.

**“Internet Service Provider”** Company that designs and builds or hosts on behalf of the merchant the merchant's web site and provides access to the Internet.

**“Mail or Telephone Order Transaction”** is a transaction where a Cardholder orders goods or services from you by telephone, mail, or other means of telecommunication (excluding Electronic Commerce Transactions), and neither the Card nor the Cardholder is physically present.

**“Non-Authenticated Security Transaction”** is an Electronic Commerce Transaction that has some level of security (such as commercially available data encryption) but does not have approved Cardholder Authentication capability compliant to the Card Schemes requirements.

**“Non-Secure Transaction”** is an Electronic Commerce Transaction that has no data protection.

**“PAN Entry Transaction”** is a Card Sales Transaction where the credit card account number is manually entered into the EFTPOS Terminal or some other electronic means which Windcave has approved.

**“Payment Gateway”** is an on line, real time Internet payment mechanism that presents a payment page to capture a Cardholder's payment details in an E-Commerce transaction and route the details to the Merchant's bank for authorisation and settlement.

**“Payment Gateway Provider”** is a business that owns or operates a Payment Gateway and facilitates the service to a Merchant to enable the Merchant to accept and process payments acquired over the Internet.

**“Recurring Transaction”** is a transaction for which a Cardholder grants written permission to you to periodically charge his/ her credit card account number for recurring goods or services provided.

**“Secure Electronic Commerce Transaction”** is an Electronic Commerce Transaction that meets the Security Level and Cardholder Authentication requirements as specified by Windcave on behalf of Visa International and MasterCard International.

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

**“URL”** Universal Resource Locator is the Internet website address.

## SCHEDULE II

### INTERNET AUTHENTICATION - SUPPLEMENTARY SCHEDULE

#### A. Application

- (a) The terms and conditions of this Supplementary Schedule apply to you if you have selected to process Internet Authentication Transactions in the Signature Section and Windcave has approved that Signature Section.
  - (b) This Supplementary Schedule forms part of, and is subject to the general terms and conditions set out in the Agreement.
  - (c) **Applicable Merchants:** An Electronic Commerce Merchant is permitted to use Verified by Visa and MasterCard SecureCode Internet Authentication products, if the following applies:
    - (i) the Electronic Commerce Merchant has been approved and authorised by Windcave to process Electronic Commerce Transactions; and
    - (ii) the Electronic Commerce Merchant is going to use a Windcave Approved Online Payment Gateway, via which a Cardholder enters Card payment details online with no interaction from the Merchant.
  - (d) **Internet Authentication Products:** Visa and MasterCard Internet Authentication products are branded as:
    - (i) Verified by Visa™ ("VbV") – used to Authenticate Visa Cardholder Card Sales Transactions;
    - (ii) MasterCard SecureCode™ – used to authenticate MasterCard Cardholder Card Sales Transactions.
  - (e) **Reserved.**
  - (f) **3-D Secure Software Integration:** If you, as an Electronic Commerce Merchant, wish to develop your own custom software for participation in 3-D Secure, you must comply with the 3-D Secure software protocol technology and functional specifications published by Visa and MasterCard. These specifications can be obtained from Windcave. You must obtain approval from Windcave of any customised integration before implementation.
  - (g) **3-D Secure Software:** Your Payment Gateway provides access to the 3-D Secure and Merchant Plug-In (MPI) software. The MPI software:
    - (i) provides access to Visa Directory Server and MasterCard Directory Server to verify Cardholder enrolment for Verified by Visa and MasterCard SecureCode;
    - (ii) identifies whether a Cardholder is participating or non- participating in VbV and MasterCard SecureCode via Verified Enrolment Request;
- (iii) will present an Authentication window for Cardholders that are participating in Internet Authentication, into which the Cardholder enters their personal password for verification and return an Authentication Response;
  - (iv) will not present an Authentication window for non-participating Cardholders but will return an Attempt Response;
  - (v) forwards successful fully-Authenticated and Attempted Authenticated Card Sales Transactions for authorisation approval;
  - (vi) does not forward a failed/denied Authentication Attempt Response for authorisation of the Card Transaction to be completed.
- (h) **Revocation:** At any time, Windcave may cease to allow you to process Internet Authentication Transactions by notice to you, in writing. You must immediately cease processing Internet Authentication Transactions upon receiving that notice. If you have been terminated or failed to comply with the requirements of this Supplementary Schedule relating to participation in 3-D Secure your Merchant number will be removed from the Visa and MasterCard Directory Servers.

#### B. Internet Authentication

- (a) **Verified by Visa:** To participate in Verified by Visa you must:
  - (i) not make VbV a condition of Visa credit card acceptance (you must not refuse to take non-enrolled Verified by Visa enabled credit cards);
  - (ii) not offer different terms or conditions for VbV and non-VbV Card Sales Transactions.
- (b) **Verified by Visa mark:** When incorporating the Verified by Visa mark into your Merchant website you must adhere to Verified by Visa branding requirements and Visa security requirements. These require that you:
  - (i) display the Verified by Visa mark as early in the shopping experience as possible (e.g. Merchant's home page, shopping cart);
  - (ii) wherever applicable, display the Verified by Visa mark along with other Visa security or better business marks (e.g. Verisign);
  - (iii) on the Payment Page, place the Verified by Visa mark next to, or very close to, the Card entry fields;
  - (iv) ensure that the Verified by Visa mark is clearly visible and not overshadowed by other elements on the page.

- (c) **Verified by Visa System Error:** If a Verified by Visa system error occurs, the "System Error" screen would be displayed. A message on this screen would inform the Cardholder that a system error has occurred. You can either proceed without Cardholder Authentication or request another form of payment. If you proceed without Cardholder Authentication, liability for any Chargeback remains with you.
- (d) **Verified by Visa Chargeback Liability:** By participating in VbV, you may benefit from a reduced Chargeback liability shift because the Card Issuer cannot Chargeback 'Not authorised by the Cardholder' Card Transactions if the following conditions have been met:
- (i) The purchase was successfully Authenticated using 3-D Secure protocol software; or
  - (ii) You tried to authenticate the Cardholder using 3-D Secure protocol software and received an Attempted Response.
- (e) **No shift in liability:** You will retain liability (liability does not shift to Card Issuer) for 'Not authorised by Cardholder' Chargebacks, which are taken at your own risk in the following situations:
- (i) Card Transactions made on Visa Travel, Corporate cards or Prepaid cards; or
  - (ii) you are currently listed on the Visa Global Chargeback Monitoring Program for Chargeback level breaches, as advised by Windcave; or
  - (iii) the Authentication response indicates that the links are unavailable between VbV systems and components. This is identified as an 'Undetermined or Unable to Authenticate' response in the Verify Enrolment Response message.
- (f) **MasterCard SecureCode:** To participate in MasterCard SecureCode you must:
- (i) always refer to MasterCard SecureCode Program by its full name, "MasterCard SecureCode";
  - (ii) display the MasterCard SecureCode mark on your website.
- (g) **MasterCard SecureCode mark:** The MasterCard SecureCode program identifier mark must be used by participating Merchants of the MasterCard SecureCode Program, subject to the following conditions:
- (i) the program identifier mark may appear in one of the three approved versions:
    - full-colour version
    - linked HTML version
    - one-colour version
  - (ii) The program identifier mark may also be used in print and Internet marketing material;
  - (iii) The program identifier mark must be reproduced only from authorised artwork
- provided by Windcave on behalf of MasterCard International;
- (iv) MasterCard reserves the right to review and approve all proposed use of program identifier mark;
- (v) When the program identifier mark is to be placed on your Merchant Website:
- The program identifier mark is a supplemental mark recommended for use in the "trust mark" space of a Merchant website;
  - The program identifier mark must not be used in place of or directly paired with the MasterCard brand mark. (The MasterCard acceptance brand mark always must be used to indicate acceptance of MasterCard cards);
  - The program identifier mark may appear on a page that displays payment options provided substantial free space between the program identifier mark and the payment acceptance marks is maintained.
- (h) **MasterCard SecureCode Liability Shift:** MasterCard has implemented a liability shift program for Cardholder dispute reasons 'No Cardholder authorisation' and 'Cardholder not recognised' Chargebacks for SecureCode Electronic Commerce Transactions. The liability for Chargebacks for these reason types shifts from the Merchant to the Card Issuer when the following conditions have been met:
- (i) the merchant has implemented SecureCode, and;
  - (ii) the purchase was successfully Authenticated using 3-D Secure software protocol; or
  - (iii) the Merchant tried to Authenticate the Cardholder using 3-D Secure software protocol Secure; and
  - (iv) the Authorisation Request Response message reflected the Card Issuer's approval of the Card Sales Transaction,
- (i) You accept risk and responsibility for any Cardholder disputes that result in Chargebacks for reasons where receipt or quality of goods is disputed (duplicated transactions), or a failure to abide by the Agreement, notwithstanding that the Card Sales Transaction has been Authenticated
- (j) **Internet Authentication Exception Card Sales Transactions:** Internet Authentication cannot be performed for the following Card Sales Transaction situations:
- (i) Electronic Commerce Transactions that have been entered into the Payment Gateway product via manual intervention by you;
  - (ii) Cardholder purchase orders received by email;
  - (iii) Cardholder purchases that have been ordered over the telephone.

- (k) **Authentication Records:** Your Payment Gateway Provider must provide you with access to view Authentication Records. Internet purchases that have been Authenticated are recorded in your Authentication logs and databases.

## C. Risk Management

---

- (a) You must maintain your existing, or implement, best practice electronic commerce risk management functions during and after the implementation of Verified by Visa and MasterCard SecureCode. These functions should include:
- (i) risk management procedures already in place for Internet and electronic commerce activities;
  - (ii) existing policies and procedures for sensitive data storage (also known as account information security);
  - (iii) understanding of fraud and Chargeback risks and liabilities; and
  - (iv) procedures for tracking and monitoring fraud allegations and losses.
- (b) Electronic Commerce Transactions have a significantly higher level of Cardholder disputes than card present transactions (i.e. retail purchases in the physical world) and other Card Not Present transactions (e.g. mail order). The key areas you should consider for your electronic commerce business are:
- (i) **Website Content** – Customer relationships can be strengthened by you using your website not only as a marketing tool to increase revenue, but also a risk management tool to avoid customer disputes. This includes privacy, delivery, refund, and credit policies, as well as customer service contact information (e.g. physical address, email address, etc.);
  - (ii) **Website Tracking and Analysis** – By tracking and analysing website activity, you can learn more about Internet visitors and identify shopping patterns with high levels of risk exposure;
  - (iii) **Data Security** – If you must store sensitive Cardholder information (e.g. account numbers, expiry dates, identity numbers, name and address, etc.), you must ensure that any sensitive information is stored in a secure manner (e.g. encrypted, scrambled or stored offline with appropriate access controls in place).

## D. Definitions

---

**3-D Secure (Three-Domain Secure):** A specification developed to standardise communication between services designed to improve the security of purchases

made via the Internet, enabling Issuers to verify a Cardholder's account ownership during an online purchase. 3-D Secure uses Secure Sockets Layer (SSL) encryption to protect payment Card information.

**3-D Secure Electronic Commerce Transaction Specification:** A software protocol that enables secure processing of Card Sales Transactions over the Internet and other networks.

**Attempt Response:** A message from the Visa or MasterCard Directory Server in response to a Verify Enrolment Request from a 3-D Secure Merchant, indicating that the Cardholder is not participating in an Authentication program.

**Authenticated and Authentication:** Process where Cardholder ownership of the payment Card account is successfully validated by the Card Issuer in accordance with the Verified by Visa or SecureCode program rules and processes.

**Authentication Attempt:** Authentication was attempted by the Merchant to Authenticate the Cardholder, and an Attempt Response was received.

**Authentication Record:** A record of 3-D Secure Authentication status from a 3-D Secure Card Issuer in response to an Authentication Request from a 3-D Secure Merchant.

**Authentication Request:** A request for Cardholder Authentication from a 3-D Secure Merchant to a 3-D Secure Card Issuer.

**Authentication Response:** A message formatted, digitally signed and sent from the Card Issuer via the Visa or MasterCard Directory Server to the Merchant Serve Plug-in providing results of the Card Issuer's Authentication Request.

**Authorisation Request:** A request by a Merchant to the Cardholder's bank for confirmation that the Cardholder has sufficient credit available and the account is in good order to be able to complete the Card Sales Transaction.

**Authorisation Request Response:** A response to an Authorisation Request from the Merchant to the Cardholder's bank via Visa or MasterCard to confirm whether the Cardholder has funds available and the account is in good order to pay for goods purchased. The Authorisation Request Response will advise whether the request was declined or approved by the cardholder's bank. If approved the Card Sales Transaction can proceed to be processed financially.

**Electronic Commerce Merchant:** A Merchant that conducts the sale of goods or services electronically over the Internet and other open networks.

**Fully-Authenticated:** A Card Sales Transaction where the Cardholder is enrolled for Verified by Visa or MasterCard SecureCode and their password was authenticated by the Card Issuer during the Authentication process.

**Internet Authentication transaction:** An Electronic Commerce Transaction that has been processed via an Internet Authentication product such as Verified by Visa or MasterCard SecureCode.

**Mark:** A symbol or logo that identifies that the Merchant is participating in Verified by Visa or MasterCard SecureCode.

**MasterCard Directory Server:** A server operated by MasterCard using the 3-D Secure protocol, that determines whether a specific Cardholder is participating

in SecureCode and directs the Authentication request to the Card Issuer for Authentication.

**Merchant Plug-In (MPI):** A module integrated into the Merchants website. The module is used to process Authentication Card Sales Transactions. It is provided as part of the 3-D Secure protocol software.

**Payment Gateway:** A system that provides Electronic Commerce Transaction services to Merchants for the Authorisation and Clearing of Electronic Commerce Transactions.

**Payment Page:** The website page displayed to allow the Cardholder to enter their payment details, when they have selected to purchase goods or services over the Internet.

**Secure Sockets Layer (SSL):** A cryptographic protocol developed to transmit, confidentially, information over open networks such as the Internet.

**Unable-to-Authenticate Response:** A message from a 3-D Secure Card Issuer in response to an Authentication Request from a 3-D Secure Merchant indicating that the participating 3-D Secure Card Issuer is unable to authenticate the Cardholder for reasons other than those that result in a Response Attempt that states the Cardholder is not a participant. (e.g. communication links are unavailable between the Merchant and the Visa systems).

**Verified By Visa:** A service designed to improve the security of purchases made via the Internet using a Visa credit card, enabling Card Issuers to verify Cardholder account ownership during the online purchase. Verified by Visa is based upon technical specifications called Three-Domain Secure or 3-D Secure. This protocol utilises Secure Sockets Layer (SSL) encryption to protect payment Card information. Verified by Visa supports magnetic stripe Visa cards and Visa chip cards.

**Verified by Visa mark:** A Visa-Owned mark used in conjunction with the Visa Authenticated Payment Program.

**Verify Enrolment Request:** A message sent from the MPI software to the Card Issuer via the Visa Directory Server to verify whether the Cardholder participates in the Authentication program.

**Verify Enrolment Response:** A message sent from the Card Issuer or the Visa Directory Server on its behalf in response to a Verify Enrolment Request. This message will indicate whether the Cardholder is or is not participating in the authentication program. Visa Directory Server: A server operated by Visa using the 3-D Secure protocol, that determines whether a Cardholder is participating in Verified by Visa and directs Authentication Requests from Merchants to the Card Issuer for Authentication.