



Payment Express - Merchant Services Agreement

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MERCHANT CREDIT CARD FACILITY AGREEMENT

TERMS AND CONDITIONS

1. DOCUMENTS FORMING PART OF THIS AGREEMENT

1.1 Agreement: The following documents form the Agreement between you and Payment Express Limited 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 Payment Express Limited;
- 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 Payment Express Limited 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 Payment Express Limited 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 Payment Express Limited. If Payment Express Limited 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 Payment Express Limited 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 Payment Express Limited 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. MERCHANT SERVICES

3.1 Merchant Services: Subject to this Agreement, Payment Express Limited will provide you with the Merchant Services specified on the Signature Section and more specifically set out below.

3.2 Title: Title to all Payment Express Limited Products remain with Payment Express Limited.

3.3 Settlement: Payment Express Limited has the following obligations to you:

- a) to pay all such moneys, and do all such acts, which Payment Express Limited 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, Payment Express Limited will forward you a statement of all Card Sales Transactions which you have entered into during that month and of which Payment Express Limited has actual knowledge. However, Payment Express Limited will not be bound, or in

any way prejudiced, by any error, mistake, omission or representation contained in any such statement.

3.4 Invalid transactions: Payment Express Limited 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.

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 Payment Express Limited of any change to your financial position which may affect your ability to perform your obligations under this Agreement;
- b) allow Payment Express Limited' 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 for the purposes of the relevant Card Scheme rules;
- c) provide Payment Express Limited 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 Payment Express Limited 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); and
- 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 Payment Express Limited by Payment Express Limited 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 Payment Express Limited;
 - 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 Payment Express Limited 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. Payment Express Limited;
 - 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);
 - j) not:
 - i. make any representation in relation to the goods and/or services provided by you that would bind Payment Express Limited, Visa and/or MasterCard; or
 - ii. indicate or imply that Payment Express Limited, Visa and/or MasterCard endorses or sponsors any of your goods and/or services; or
 - iii. refer to Payment Express Limited, 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 Payment Express Limited.

Payment Express Limited 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.

4.5 Obligations with respect to Payment Express Limited Products: You must:

- a) only use Payment Express Limited Products when completing a Card Sales Transaction;
- b) keep all Payment Express Limited 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 Payment Express Limited Products;
- d) immediately notify Payment Express Limited if any Payment Express Limited Products become damaged, lost or stolen;
- e) pay to Payment Express Limited any amount it requests for repairing or replacing any Payment Express Limited Products, including as a result of any failure to return Payment Express Limited 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 Payment Express Limited; and
 - iii. only use equipment that complies with EMV/3DES Card Scheme security standards; and
- g) immediately return any Payment Express Limited Products, including EFTPOS Terminal Equipment if you are leasing from us, following the termination of this Agreement and allow any agent or representative of Payment Express Limited on to your premises in order to reclaim any Payment Express Limited 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 Data Security Standard contact Payment Express Limited at support@paymentexpress.com or visit the PCI website at 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 Payment Express Limited 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 Payment Express Limited;
- e) within 3 months of being requested by Payment Express Limited, 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 Payment Express Limited: email support@paymentexpress.com, or call the Payment Express Limited 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 Payment Express Limited;
- g) maintaining full compliance with PCI DSS on an ongoing basis by undergoing such certification tasks as requested by Payment Express Limited from time to time. It remains your responsibility to ensure ongoing PCI DSS compliance, regardless of any notification by Payment Express Limited. You are liable for any fees that may be charged by the Card Schemes in respect of registration for PCI DSS.

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 Payment Express Limited;
 - 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; and
 - iii. implement and follow the Incident Response Plan; (iv) maintain a rigorous audit trail of all actions taken to isolate and rectify the event;
 - iv. assist Payment Express Limited to the best of your abilities including providing detailed statements and schedules of Card accounts exposed by the Data Breach;
 - v. allow Payment Express Limited' 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;
 - vi. if you use the services of an external Agent, ensure that Payment Express Limited, 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
- vii. in order to be allowed to continue processing Card Sales Transactions, you will have to undergo a full Payment Card Industry Data Security Standard ("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: 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.

4.10 Liability and Authorisation: 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 Payment Express Limited disputes liability for any reason; or
 - iii. in respect of which the Cardholder asserts a claim for set-off, or a counterclaim, against Payment Express Limited for any reason, that amount;
- d) any fee, cost, charge, liability, or expense or other amount becomes payable by you to Payment Express Limited (including MSFs, penalty fees, Chargebacks, fines imposed by Card Schemes and amounts payable under clauses 4.5, 4.6, 4.7, 4.8 and 6.2), that amount;
- e) any stamp duty, postage cost, commission, charge, fee, liability, expense or other amount being incurred by Payment Express Limited in connection with the Agreement, that amount; or
- f) any other amount is owing to Payment Express Limited by you, that amount.

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

4.13 Direct Debit Authority: Without prejudice to the authority in clause 4.10, Payment Express Limited may, for the purposes of clause 4.10, require you to provide to Payment Express Limited a direct debit authority in a form required by Payment Express Limited. 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 Payment Express Limited 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) in no circumstances may you give out cash as a refund; and
- d) when refunding using a Credit Voucher, you must use the same Credit Card Number as was used for the original transaction.

4.16 Access to your records: You must allow Payment Express Limited 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 Payment Express Limited with any other information which Payment Express Limited may reasonably request, including (but not restricted to) your audited financial statements.

4.17 Collection of information: You authorise Payment Express Limited to create and maintain records in respect of you and your business and to collect information about you from any person or entity whom Payment Express Limited 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 Payment Express Limited believes can verify, or validly comment on, your creditworthiness or any statement or representation which you have made to Payment Express Limited; and you authorise each such person or entity to make available to Payment Express Limited all information requested by Payment Express Limited.

4.18 Disclosure by Payment Express Limited: You authorise Payment Express Limited to disclose any relevant information about you held by Payment Express Limited to any party Payment Express Limited 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 Payment Express Limited 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 Payment Express Limited 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 Payment Express Limited (and any of its related companies or Agents) to use any information that Payment Express Limited 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 Payment Express Limited 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 Payment Express Limited 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 Payment Express Limited 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 Payment Express Limited 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 Payment Express Limited;
 - e) you will remain liable for any Chargebacks or outstanding monies owed to Payment Express Limited after the termination of this Agreement, as stated in clause 7.7;
 - f) if you have Prepayment Card Sales Transactions, Payment Express Limited's allowing you to continue to have Prepayment Card Sales Transactions may be conditional on your entering a Prepayment Limit Agreement with Payment Express Limited, pursuant to, which Payment Express Limited will at its discretion, from time to time, determine your limit allowed for Prepayment Card Sales Transactions.

5. FEES PAYABLE

5.1 Rate: Payment Express Limited 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, Payment Express Limited 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. Payment Express Limited 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 Payment Express Limited 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, Payment Express Limited 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 (or, if clause 6.1 applies, the Preferential 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 Payment Express Limited 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 Payment Express Limited under clauses 4.10, 5.2, 6.2 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 Payment Express Limited, unless, in Payment Express Limited's discretion, Payment Express Limited by notice in writing for each occasion waives its right to receive interest under this clause.

6. PREFERENTIAL RATE FOR ASSOCIATION MEMBERS

6.1 Association members: If, following receipt of written notice that includes your Association number (which can be satisfied by indicating Association membership on the Signature Section), Payment Express Limited is satisfied that you are a member of an Association, then, subject to clause 6.2, from the date of receipt of such notice the Rate will be equal to the Preferential Rate which recognises your membership in that Association, as determined by Payment Express Limited in its discretion. Payment Express Limited may, at any time, require you to provide evidence that you are an Association member.

6.2 Ceasing to be an Association member: You must immediately notify Payment Express Limited if you cease to be an Association member. If, in Payment Express Limited's opinion you cease at any time to be a member of that Association (whether you notify Payment Express Limited or not), the Rate may be increased by notice to you by an amount which Payment Express Limited, in its discretion, considers appropriate and that increase will not be an increase for the purposes of clause 7.5 and will take effect from the date on which Payment Express Limited, in its discretion, determines that you ceased to be a member of that Association ("Effective Date"). If the Effective Date precedes the date on which Payment Express Limited was notified that you had ceased to be a member of that Association, you will be liable to Payment Express Limited for, and shall immediately pay to Payment Express Limited, an amount which is equal to the difference between (a) the total amount of all MSFs paid by you on and after the Effective Date calculated at the Preferential Rate, and (b) the total amount of all MSFs which would have been payable by you on or after the Effective Date calculated using the increased Rate.

7. TERMINATION

7.1 Payment Express Limited' rights: Payment Express Limited 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, or there is a change in your ownership or control, or you have been non-compliant with PCIDSS.

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 Payment Express Limited 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 Payment Express Limited;
- 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 Payment Express Limited;
- c) commence processing a type of Card Sales Transaction listed on the Signature Section without prior consent from Payment Express Limited; or
- d) process such volume of transactions (including electronic or manual transactions) under this Agreement or take any other actions which, in Payment Express Limited' 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 Payment Express Limited increases the Rate in accordance with clause 5.1, you object to that increase in writing to Payment Express Limited 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) such increase is not due to you ceasing to be an Association member pursuant to clause 6.2; or
- c) 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 Payment Express Limited one (1) month's prior written notice.

7.5 Circumstances in which no termination fee payable: If, at any time Payment Express Limited 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 Payment Express Limited 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 Payment Express Limited Products to Payment Express Limited;
- b) cease to use or display any Mark;
- c) immediately pay Payment Express Limited 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 Payment Express Limited.

7.7 Other rights not affected: The termination of this Agreement shall not affect any right held, or obligation incurred, by either Payment Express Limited 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 Payment Express Limited breaching this Agreement), or Payment Express Limited terminates this Agreement because you have breached this

Agreement, you will immediately pay to Payment Express Limited (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) $(.25 \times \text{AMSF}) \times T$; or
- b) \$200.00, 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 Payment Express Limited), 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 Payment Express Limited); and T is either the number of months remaining per Facility before the end of the Initial Term or Subsequent Term (as the case may be), or if the Initial Term or Subsequent Term (as the case may be) has less than three (3) months remaining, three (3), being Payment Express Limited's current reasonable estimate of its damages, costs and expenses, which will arise from termination.

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 Payment Express Limited 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 Payment Express Limited may direct you to display, and you must do so in accordance with the directions of Payment Express Limited.

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 Payment Express Limited's written approval to the advertising and/or material.

11. INDEMNITIES

11.1 Limitation of liability: Without limiting clause 11.2, Payment Express Limited 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 Payment Express Limited to perform any of its obligations under this Agreement where, in the opinion of Payment Express Limited, 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 Payment Express Limited's direct control; or
- b) the failure of, or a mistake, error or omission made by, the Card Payment System.

11.2 No liability for lost profits: Without limiting clause 11.1, Payment Express Limited 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 Payment Express Limited to perform any of its obligations under this Agreement.

11.3 Indemnity: You must indemnify Payment Express Limited against any loss, cost, damage, expense or liability suffered or incurred by Payment Express Limited 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 Payment Express Limited by you or any information withheld from Payment Express Limited 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 Payment Express Limited, 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, Payment Express Limited and you.

12. COMBINATION AND SET OFF

12.1 Authorisation to set off: If you have any account with Payment Express Limited (including Your Account, and regardless of whether that account is held by you alone or together with any other person) (a "Payment Express Limited Account"), you authorise Payment Express Limited to:

- a) transfer all or any part of the balance standing to the credit of any Payment Express Limited Account to the credit of another Payment Express Limited Account (if any);
- b) apply all or part of the balance standing to the credit of any Payment Express Limited Account in or towards satisfaction of any amount payable by you to Payment Express Limited; and/or
- c) apply any amount owed to you by Payment Express Limited in or towards satisfaction of any amount payable by you to Payment Express Limited and Payment Express Limited 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 Payment Express Limited is, or may at any time be, entitled.

13. VARIATIONS

13.1 Payment Express Limited may vary Agreement: Payment Express Limited 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 Payment Express Limited thinks appropriate and any such variation will take effect fourteen (14) days after the date that Payment Express Limited gives that notice. You may not vary this Agreement unless in writing and agreed with Payment Express Limited.

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 Payment Express Limited 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 Payment Express Limited with all necessary details of that account and a new authority to direct debit Your Account (as changed).

14. AGENT

14.1 Payment Express Limited may use Agents: All or any of Payment Express Limited'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 Payment Express Limited arises out of, or in connection with, this Agreement, you agree to meet with Payment Express Limited 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 Payment Express Limited 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 Payment Express Limited 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 limit or affect in any way:

- a) any right, power or discretion of Payment Express Limited specified in this Agreement including, but not limited to, Payment Express Limited's right to terminate this Agreement at any time, with or without cause; or
- b) Payment Express Limited'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 facsimile, email (each subject to clause 16.3), personal delivery or prepaid letter dispatched to the facsimile number, 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 facsimile, it shall be deemed to have been given upon transmission of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety, provided that, if a transmission report is received 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;
- b) 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;
- c) 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
- d) in the case of delivery by email:
 - i. in the case of emails sent by you to Payment Express Limited, it shall be deemed to have been given upon receipt by you of a return email from Payment Express Limited acknowledging receipt of such email (for the avoidance of doubt, an automatic or system generated acknowledgement from Payment Express Limited will not be considered a return email for the purposes of acknowledgement of receipt notice); or
 - ii. in the case of emails from Payment Express Limited 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.

16.3 If any notice under this Agreement is given by email or facsimile and such notice involves a value instruction over \$10,000, Payment Express Limited 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 Payment Express Limited may assign: Payment Express Limited 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 Payment Express Limited's prior written consent.

18. PAYMENT EXPRESS LIMITED'S DISCRETIONS AND POWERS

18.1 Other rights: Unless this Agreement states otherwise, any power, authority, decision, determination and/or discretion which Payment Express Limited has by law and/or under this Agreement can be exercised, or not exercised, by Payment Express Limited in its absolute and uncontrolled discretion, at the time or times, upon the terms and conditions, and in the manners, which Payment Express Limited decides. The rights, powers and remedies provided to Payment Express Limited 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 Payment Express Limited 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 Payment Express Limited 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: You agree that Payment Express Limited may delay, defer, stop or refuse to process any transaction without incurring any liability if Payment Express Limited knows or suspects that:

- a) the transaction will breach any laws or regulations in New Zealand or any other country; or
- b) the transaction involves any person (natural, corporate or governmental) that is itself sanctioned, or is connected, directly or indirectly, to any person (natural, corporate or governmental) that is sanctioned, under economic and trade sanctions imposed by any country.

You agree to provide all information to Payment Express Limited which Payment Express Limited reasonably requires in order to manage its money-laundering, terrorism-financing or economic and trade sanctions risk or to comply with any laws or regulations in New Zealand or any other country. You agree that Payment Express Limited may be required to delay, defer, stop or refuse to process any transaction, or terminate its business relationship with you, if you fail to provide this information to Payment Express Limited.

Unless you have disclosed to Payment Express Limited that you are acting in a trustee capacity or on behalf of another party, you warrant that you are acting on your own behalf in entering into the Agreement.

For each transaction conducted under this Agreement, you represent and warrant to Payment Express Limited that, to best of your knowledge, information and belief at the time the transaction takes place, the processing of that transaction by Payment Express Limited in accordance with your instructions will not breach any laws or regulations in New Zealand or any other country relevant to the transaction.

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, Payment Express Limited holds 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: Payment Express Limited will not be deemed to have waived any provision of this Agreement

unless that waiver is in writing and is signed by Payment Express Limited, or an authorised officer of Payment Express Limited. 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 Payment Express Limited 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 Payment Express Limited 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, 6.2, 8.1, 11.3, 12.1 and 15.1 and Payment Express Limited'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.

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 Payment Express Limited determines in its discretion is an Association for the purposes of this Agreement.

"Acquiring Charge" means the amount charged by Payment Express Limited 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 Payment Express Limited 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 Payment Express Limited is open for business in the place where, or the place nearest to where, the notice is required to be received.

"Card" means each of a Visa Card, or a MasterCard Card, as selected by you in the Signature Section.

"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 as selected on the Signature Section or later accepted for use by you in writing by Payment Express Limited 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) Payment Express Limited' systems (including its processing systems); and
- b) any system of any agent of Payment Express Limited or any other third party; and
- c) any service provided by any agent of Payment Express Limited or any other third party, which Payment Express Limited 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 Payment Express Limited, 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.

"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.

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

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

"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 Payment Express Limited or an authorised representative of Payment Express Limited 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

finances 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 Your Bank pays to the issuers of Visa or MasterCard Cards for Card Sales Transactions accepted at the Merchant facility when a Visa or MasterCard card is used (except where the Card Sales Transaction results from the presentation of a New Zealand issued Visa debit 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

“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 Payment Express Limited 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 Payment Express Limited and any other document which Payment Express Limited, 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 Payment Express Limited 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 Payment Express Limited 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.

“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 Payment Express Limited 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.

“PCI” means Payment Card Industry

“Preferential Rate” means any discounted Preferential Rate determined by Payment Express Limited 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 Payment Express Limited 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 Payment Express Limited allows you to have, and which may include additional conditions on your acceptance of Prepayment sales.

“Rate” means the Rate that Payment Express Limited 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.

“Signature Section” means the Merchant service detail/application form attached to the front of this Agreement and signed by you and Payment Express Limited, which sets out, amongst other things, the types of Card Sales Transactions you will process and the details of the Merchant Services that Payment Express Limited 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 Payment Express Limited as a “Terminal” for the purposes of this Agreement; or

- c) any other device which is approved by Payment Express Limited 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 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, Payment Express Limited 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 Payment Express Limited may advise you for the purposes of this definition.

"Payment Express Limited" means Payment Express Limited Limited, incorporated under the Companies Act 1993, and having its principal place of business in New Zealand at 98 Anzac Avenue, Auckland, and includes its successors and assigns.

"Payment Express Limited Products" means any product, stationery or equipment supplied to you by Payment Express Limited, 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 Payment Express Limited 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 Payment Express Limited 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 Payment Express Limited 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) Payment Express Limited 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 Payment Express Limited if you select the transaction type in the Signature Section and Payment Express Limited signs that Signature Section.
- e) At any time, Payment Express Limited 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 Payment Express Limited of a Card Not Present Transaction does not in any way guarantee payment by Payment Express Limited for that transaction. Payment Express Limited 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; and
 - 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.
 - 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:
 - 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);
 - 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;
 - terms and conditions of sale, if these are restricted for Electronic Commerce Transactions;
 - if a free trial is offered, the exact date the free trial ends; (ee) cancellation policies; and
 - the Cardholder's internet or email address;
 - iii. for Delayed Delivery Transactions:
 - the word "Deposit" on the Transaction Record for the first transaction payment; and
 - 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 facsimile); 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 Payment Express Limited 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. Payment Express Limited 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:
 - thirty (30) days or more;
 - the monthly anniversary of the date of despatch (same day of each month); or
 - 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 electronic mail 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;
 - 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.
- b) **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 Payment Express Limited 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 or facsimile number; or
 - website name; or
 - nature of business.
- c) **Secure E-Commerce:** Payment Express Limited may, at its discretion, require you to support and use Payment Express Limited 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 Payment Express Limited 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 Payment Express Limited 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 Payment Express Limited 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 Payment Express Limited to process Electronic Commerce Transactions; and
 - ii. the Electronic Commerce Merchant is going to use a Payment Express Limited 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) **Online Payment Gateways:** The following online hosted Payment Gateway products have Internet authentication capability and provide the 3-D Secure software protocol technology:
 - i. Payment Express Limited Internet Payment Solution (WIPS Plus) – provided by DPS;
 - ii. Payment Express Limited Virtual – provided by Paymark Virtual;
 - iii. Payment Express Limited (DPS) Payment Express – provided by DPS.
- 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 Payment Express Limited. You must obtain approval from Payment Express Limited 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, Payment Express Limited 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 Payment Express Limited; or
 - iii. the Authentication response indicates that the links are unavailable between VbV systems and components. This is identified as '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 Payment Express Limited 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
 - v. 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 (Merchant Plug-In) 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.