

## GENERAL TERMS AND CONDITIONS (International)

### 1. General

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- 1.1** Together with the Merchant Services Terms, these General Terms constitute the Agreement between Windcave and you and apply to you if you use any Services or Goods. You also agree to be bound by additional terms which are specific to a Service or Goods you use (**Agreement**). By using our Services or Goods you agree to be bound by this Agreement from the Commencement Date.
- 1.2** This Agreement governs your relationship with us relating to the Services and Goods and will apply to the exclusion of any inconsistent terms issued by you.
- 1.3** This Agreement continues for the Term and will automatically renew for successive periods of the Term unless either party gives the other at least 1 month's written notice to terminate.
- 1.4** Gateway and Merchant Services under this Agreement may be provided by Windcave New Zealand Limited or any of its Related Companies.

### 2. Fees/Payment

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- 2.1** You must pay for the Goods or Services we provide to you, and you agree to pay us the Fees without setoff or deduction on the due date. Default Interest will be payable by you on overdue amounts for the Services or Goods. All fees, costs and charges payable pursuant to this Agreement will be charged plus taxes (if applicable). You are also liable to pay for the Fees in respect of Services you have actually used.
- 2.2** Unless we agree you may pay your Fees by credit card or direct credit, you will provide to Windcave a direct debit authority in a form required by Windcave for the payment of all Fees and to debit, credit and settle amounts from your Nominated Bank Account. This direct debit authority may only be terminated or revoked if this Agreement is terminated in accordance with its terms and all amounts actually or contingently owing to Windcave by you have been satisfied. You authorise us to debit and credit (as applicable) your credit card or Nominated Bank Account for the purposes of the Agreement.
- 2.3** You must maintain a Nominated Bank Account for the term of the Agreement. This account must be a valid New Zealand based, New Zealand Dollar transactional bank account. If at any time you change your Nominated Settlement Bank Account, you must immediately provide us with all necessary details of that account and a new direct debit authority.
- 2.4** Windcave may adjust the Fees during the Term by providing you with at least 30 days' written notice.
- 2.5** You are responsible for all Taxes, and GST (other than Windcave's income tax) assessed in connection with the Services and Goods.
- 2.6** In addition to the Fees, you are responsible for, and indemnify Windcave in relation to, any penalties or fines levied by any Card Issuer, Payment Scheme, payment network, financial institution, regulator or other financial intermediary from your use of the Services and all costs and expenses (including collection costs and legal costs on a solicitor-client basis) that Windcave incurs in attempting to recover or recovering any overdue or unpaid amounts you owe to Windcave.
- 2.7** If you do not pay the Fees in accordance with this Agreement, Windcave may suspend the Services and/or terminate this Agreement. In such event, you agree that Windcave will have no liability for any consequences of such suspension or termination.

### 3. Merchant General Responsibilities

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- 3.1** You confirm that you have read and understood this Agreement and have had the opportunity to seek legal advice.
- 3.2** You confirm that all information provided by you to Windcave is accurate and complete and that you will promptly notify us in

writing if such information changes or is no longer accurate including if the Merchant has had a change in directors, trustees, authorised signatories, financial condition, business activities, ownership, control or anything else which is relevant. You must inform Windcave immediately if your business is experiencing difficulties paying any of its debts when they are due or honouring goods or services commitments to your customers.

- 3.3** On request by Windcave, you will provide us with sufficient information to enable us to comply with our obligations, Applicable Laws and assess risk associated with your business. Your failure to provide this information may result in the suspension or termination of the Services to you.
- 3.4** You will obtain and maintain all licences, permissions and consents which may be required for the Services before the date on which the Services are due to start, including in respect of (1) any software owned by, or licensed to, you and which Windcave needs to access or use in performing the Services; and (2) any personal information which is provided by you to us, and which relates to you, your personnel or customers, so that this personal information can be used by Windcave in accordance with our Privacy Policy.
- 3.5** You will comply with this Agreement, the Documentation, our restrictions and instructions, all Applicable Laws, Security Standards and Payment Scheme Regulations in your use of the Services and Goods. If Merchant consists of more than one person, the obligations and liabilities of each person shall be joint and several. If Merchant consists of more than one person, Windcave may act on the instructions we receive from any one person.
- 3.6** You are solely responsible for any and all activity undertaken by you and your users on the Windcave Gateway / Payline Portal and shall ensure the security of any login credentials. Windcave is not responsible for any loss or damage caused by your failure to maintain the security of the Windcave Gateway / Payline Portal.
- 3.7** The Services and Goods may only be used by you and may not be used by, or on behalf of, any third party (including any associated or Related Entity of yours), without our prior written consent. If Windcave grants such consent, Merchant must ensure that the third party complies with the Agreement (so far as those provisions relate to Merchant) as if the third party were a party to this Agreement. Merchant will be liable to Windcave for all acts or omissions of any such third party.
- 3.8** You will keep all Windcave materials, including any Goods we provide to you, in safe custody at the Merchant's own risk and not use them other than in accordance with this Agreement, including the obligations set out in clause 15.
- 3.9** You are responsible for all equipment, charges and costs associated with connecting to the Windcave Host to operate the Windcave Gateway. Windcave will provide Merchant with reasonable technical information and Software necessary to enable Merchant to connect to the Windcave Host.
- 3.10** You will, except to the extent caused by an act or omission of Windcave, be responsible for managing the use of all login details made available to you and your authorised users and be responsible for the use of the Windcave Gateway via any logins issued to you or your authorised users.
- 3.11** Each day you must review your: (a) Payline Portal to ensure no Transaction errors have occurred and (b) Nominated Bank Account to ensure deposits and settlements have occurred without error. If an error is discovered by you, you must notify Windcave in writing within 3 Business Days of the date such error occurs and the relevant details of it.
- 3.12** If you cease to use Goods (for example where Goods are obsolete or no longer operate or are replaced under warranty) or if this Agreement is terminated, you must return the Goods to Windcave at your cost within 30 calendar days.
- 3.13** You ensure that no act or omission by you and/or the persons related to you nor use (directly or indirectly) of any Goods and (or) Services under this Agreement is in a manner that is in breach of Sanctions. We may refuse to provide Goods and (or) Services or impose service limitations (including the execution of Transactions and freeze of funds) and we will not be liable for the

related losses incurred by you if: (a) you are subject to Sanctions, (b) you are related to a subject to Sanctions, (c) your Transactions are related with a subject to Sanctions, or (d) we are executing any requirements or restrictions established by our banks or competent authorities or bodies related to the implementation of Sanctions.

#### 4. Terms of Use

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- 4.1** You acknowledge that you have not relied on any statements or representations on the part of Windcave as to performance or functionality, of the Service or Goods, the Windcave Host, Windcave Gateway, Software or the Payline Portal whether in writing, verbal or otherwise, except as expressly recorded in this Agreement.
- 4.2** If you use a capture method for Card processing using a system which is not hosted by Windcave, you agree to display the Windcave Logo in a readily visible position on the user interface of Merchant's system where the Card data is captured. Merchant will not alter, obscure, or use the Windcave Logo for any other purpose without the prior written consent of Windcave.
- 4.3** If you do not comply with any of the Security Standards, you must not capture or store any Card number or the Card's expiry date locally on your or a third party's system.
- 4.4** You must not, and must not permit any other person to, reverse assemble or decompile, copy, reproduce, translate, adapt, vary, repair or modify all or any part of the Windcave Gateway, the Goods, the Software or the Documentation by any means or in any form without Windcave's prior written consent.
- 4.5** You may not use the Windcave Gateway, the Goods, the Software or the Documentation for any purpose other than the Permitted Use or use the Software independently of the other components of the Windcave Gateway unless Windcave has given prior written consent to do so.
- 4.6** You will be responsible for, and bear all costs associated with, the installation, operation, maintenance and support of the Goods.

#### 5. Windcave's General Responsibilities

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- 5.1** Windcave will comply with all relevant Applicable Laws, Security Standards, and the Privacy Policy. Windcave will co-operate with Merchant (and Merchant's service providers) in connection with providing the Windcave Gateway.
- 5.2** Windcave will not decrypt and transmit Tokenized Data to Merchant or any third party.

#### 6. Windcave Warranties

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- 6.1** Nothing in this Agreement is intended to have the effect of restricting or modifying your rights or our obligations that cannot be restricted or modified by law.
- 6.2** Subject to clause 6.6, Windcave warrants that the Goods to be delivered under this Agreement will be free from defects in workmanship (labour and parts included, but transport excluded) during a twelve calendar month warranty period commencing on the delivery date (**Original Warranty Period**). The warranty period on exchanged or repaired Goods shall expire at the conclusion of the Original Warranty Period.
- 6.3** Defective Goods, under warranty, shall be replaced or repaired, free of charge, at Windcave's sole discretion, at Windcave or subcontractor's premises. Merchant must pay the costs of transport of the Goods (including insurance) to Windcave.
- 6.4** Windcave may repair the Goods with spare parts or new parts. The new, defective and/or repaired parts, will remain the property of Windcave if the Goods are rented.
- 6.5** Where Goods are replaced pursuant to the warranty in clause 6.2, Merchant must return the original Goods to be replaced to Windcave within 30 calendar days of replacement Goods being shipped to Merchant. Merchant shall pay the shipping fees to return the original Goods to Windcave.

**6.6** Windcave will have no liability under the warranty in clause 6.1 in respect of:

- (a) defects, breakdowns, or malfunctions due to failure to properly follow the Documentation including in relation to the installation process, instructions for use and maintenance; or
- (b) external causes (including, but not limited to, shock, lightning fire, vandalism, malicious action, contacts with various liquids or vermin or water damage of any nature, and inappropriate electric voltage); or
- (c) modifications to the Goods made without the written approval of Windcave; or
- (d) maintenance of the Goods by persons not authorized by Windcave; or
- (e) damage due to insufficient or bad packaging of the Goods when returned to Windcave; or
- (f) wear and tear from normal use of the Goods and accessories; or
- (g) communication problems related to an unsuitable environment, including problems accessing the Internet, transmission faults, local network faults, and modification of the parameters of the relevant cellular network after sale of the Goods; or
- (h) goods returned to Windcave without Windcave's prior consent or that Windcave has not had an opportunity to inspect, investigate or electronically troubleshoot; or
- (i) defects, breakdowns, or malfunctions due to obstructing material being placed on or into the Goods such as paper, plastic, and metal objects or the use of non-compatible products or accessories.

**6.7** Windcave warrants that Windcave has the right and authority to grant to Merchant the licence set out at clause 14.1, in accordance with the terms of this Agreement.

**6.8** To the fullest extent permitted by law, except as expressly provided at clause 6.2 and 6.6, Windcave excludes all warranties, conditions, terms, representations or undertakings, whether express, implied, statutory or otherwise. Windcave does not warrant that the Services and the Goods will meet Merchant's requirements, or that the Services and the Goods will be uninterrupted or error free.

#### 7. Intellectual Property

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- 7.1** Windcave (or its licensors or suppliers) exclusively own all Intellectual Property rights in the Windcave Gateway, the Services, the Goods, the Software, the Documentation, any Developed Works and the Windcave Logo (collectively the **Windcave IP**).
- 7.2** You acknowledge and warrant that you will not assert any ownership rights or claim any interest in any of the Windcave IP and you will immediately notify Windcave if you become aware of any third party infringing any rights in the Windcave IP.
- 7.3** You must display the advertising and/or promotional materials which Windcave directs you to display, and you must do so in accordance with the written directions of Windcave.
- 7.4** If you wish to use promotional materials and/or advertisements which show, use or include a Mark, for any purpose not specifically authorised by this Agreement, you must first obtain Windcave's written approval to use that advertising and/or material.

#### 8. Indemnity

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**8.1** You indemnify Windcave against all losses, costs (including legal costs calculated on a full indemnity basis and all other reasonable professional costs and expenses), damages, expenses, penalties or liabilities suffered or incurred by Windcave as a result of:

- (a) breach by you of this Agreement;
  - (b) any incorrect or misleading information supplied to Windcave by you, or any relevant information withheld from Windcave by you;
  - (c) any other act of, or omission by, you or any of your employees, officers or Agents whatsoever (including the completion of a Transaction or Refund, the use of a Terminal and/or the use of any Goods and/or Windcave Logo or Mark);
  - (d) any action taken by Windcave or, a Payment Scheme because of any act of, or omission by, you or any of your employees, officers or Agents; or
  - (e) any dispute between any or all of the Cardholder, Windcave and you.
- (b) any act or omission of you, a Cardholder, our processing bank, your Acquirer, Your Bank, or Payment Scheme; or
  - (c) any other event or circumstance outside Windcave's direct control.

## 10. Consumer Guarantees Act

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- 10.1 It is expressly acknowledged and agreed by you that the Services and the Goods are supplied to you for business purposes and that the provisions of the Consumer Guarantees Act 1993 do not apply.

## 11. Termination and suspension

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- 11.1 Either party may terminate this Agreement in whole or terminate the provision of Merchant Services (if applicable) at any time on not less than 3 months prior written notice to the other provided that if the balance of the current term is less than 3 months either party may terminate this Agreement in whole or terminate the provision of Merchant Services (if applicable) on not less than 1 month's prior written notice. Where the Merchant terminates, unless clause 11.4 applies, the Merchant will be liable for the Fees for the remainder of the Term which shall be payable immediately on termination.

- 11.2 If Windcave determines, in its sole discretion, that: (a) you are ineligible for the Services because of significant fraud or credit risk or any Insolvency Event by you or persons who control the Merchant; or (b) you commit a material breach of any of the terms of this Agreement which, in the reasonable opinion of Windcave, cannot be remedied, or has not been remedied after a reasonable opportunity to remedy has been given to you; or (c) you are non-compliant with the Security Standards; or (d) you do not comply with any Applicable Law, Payment Scheme or (e) a Card Issuer, Payment Scheme or applicable regulator requires us to do so; or (f) there is a change in your ownership or control or the nature/type of your business; (g) you use the Services in a prohibited manner or otherwise do not comply with any of the provisions of this Agreement or Windcave's AML/CFT policies and procedures or applicable Sanctions, Windcave may: (i) suspend the provision of Services, and if we are providing Merchant Services to you we may hold your funds to cover outstanding costs, Chargebacks and any other risks determined by Windcave (acting reasonably); and/or (ii) terminate this Agreement in whole or in part with immediate effect by written notice to you.

- 11.3 If this Agreement is terminated for cause, Windcave may be required to report the Merchant, its owners or controllers and its business to Payment Scheme databases, including MATCH (Member Alert to Control High Risk Merchants) and VMSS (Visa Merchant Screening Service) under Payment Scheme Regulations, and the Merchant consents to such reporting. Additionally, if this Agreement is terminated by Windcave pursuant to clause 11.2 prior to the expiry of the Term, Merchant must pay the unpaid balance of the Fees due under this Agreement and the cost of Windcave's reasonable expenses in terminating this Agreement.

- 11.4 Merchant may terminate following adjustment of the Fees pursuant to clause 2.4 or where Windcave has amended the Agreement pursuant to clause 21.2 and such amendment has a material adverse effect on your use of our Services, by you giving 30 days' written notice to Windcave. In these circumstances, Merchant is only liable for the Fees up to the date of termination and will not be liable for the Fees payable to the end of the Term or any damages under clause 39.1.

- 11.5 Termination of this Agreement will not affect the rights or obligations of the parties which have accrued prior to or accrue on termination or which by their nature are intended to survive termination (including clauses 2, 7.2, 7, 8, 9, this 11.5, 12, 21, 22 and 25, together with those clauses which are incidental to, and required in order to give effect to, those clauses). Merchant Services: obligations under clauses 31, 32, 37, 39 and Windcave's rights under clause 35 survive the termination of this Agreement.

- 11.6 Termination of the Gateway Services will also terminate the Merchant Services (which may incur a termination fee pursuant to clause 39 of the Merchant Terms).

- 11.7 On the termination of this Agreement, you must immediately: (a) return all Goods to Windcave; (b) stop displaying any Windcave IP; (c) immediately pay Windcave any outstanding fees, charges,

## 9. Liability

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- 9.1 Subject to clauses 9.2 and 9.3, Merchant's remedy for any breach by Windcave of Windcave's obligations under the Agreement is (at Windcave's option) either:

- (a) the supply or re-supply of the Services or Goods; or
- (b) the refund or waiver of Fees for the relevant part of the Services or the Goods which is related to the breach.

- 9.2 Subject to clause 9.3, to the maximum extent permitted by law, Windcave's total liability to the Merchant or any other party in connection with the Agreement or any other services provided by Windcave (whether in contract, tort, including negligence, or otherwise) for any event or series of connected events will not exceed, in the aggregate, an amount equal to the lesser of:

- (a) the fees paid by you to Windcave during the last three (3) months, exclusive of fees and variable costs incurred by Windcave from a third party (for example, in relation to the Merchant Services this will include interchange costs and assessments); or
- (b) fifty thousand dollars (\$50,000).

- 9.3 For the avoidance of doubt, nothing in this clause 9 shall exclude or limit liability of either party in respect of death or personal injury resulting from its negligence, or in respect of fraud or wilful default or any matter in respect of which it would be unlawful to exclude or restrict liability.

- 9.4 Windcave will not be liable to Merchant whether in contract, tort (including negligence) or otherwise in respect of any:

- (a) loss of data, lost profits, loss of revenue, loss of goodwill, loss of business, loss of opportunity, loss of reputation, loss of expected savings or for any indirect, consequential or special loss, damage, cost or expense suffered or incurred by Merchant arising out of, or in connection with, this Agreement whether or not that loss was, or ought to have been, contemplated;
- (b) loss, damage, cost or expense suffered or incurred by Merchant, to the extent this results from any act or omission by Merchant; or
- (c) Force Majeure Event.

- 9.5 In addition to any other limitation of liability in this Agreement, Windcave has no liability to you for any loss, cost, damage, expense or liability suffered or incurred by you, whether directly or indirectly because of any failure by Windcave to perform any of its obligations under this Agreement where, in the reasonable opinion of Windcave, that failure is wholly or partly a result of:

- (a) a failure of or a mistake, error or omission made by the Payment System;

costs, liabilities or other amounts payable by you under this Agreement including the MSF; and (d) comply with any other reasonable directions from Windcave.

- 11.8** Notwithstanding clause 11.1, Windcave may terminate the provision of PAN Entry transactions and mail or telephone order transactions (MOTO) without cause and with immediate effect upon notice.

## **12. Confidentiality**

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**12.1** Each party must keep confidential any Confidential Information of the other party except as, and then only to the extent:

- (a) required by Applicable Law, Payment Scheme Regulations or Regulatory Requirements;
- (b) that the information is already or becomes public knowledge, other than because of a breach of this Agreement;
- (c) that the information is received from a third party who is not under an obligation of confidentiality in relation to the information;
- (d) that the information is developed independently without access to, or use or knowledge of the Confidential Information;
- (e) authorised in writing by the other party; or
- (f) reasonably required by this Agreement.

**12.2** Without limiting clause [12.1](#), Merchant will treat information about Windcave IP as the Confidential Information of Windcave.

**12.3** Each party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of this clause. Each party will therefore be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this clause.

**12.4** The obligations in this clause survive termination of this Agreement.

## **13. Force Majeure**

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**13.1** Merchant acknowledges that Windcave relies on third-party providers in the delivery of the Services. Merchant agrees that Windcave shall not be liable for, and will hold Windcave harmless for any losses, damages, or business interruptions sustained because of interruptions caused by its wireless data network providers or any other third-party provider.

**13.2** Neither party will be liable for any delays in processing or other non-performance caused by a Force Majeure Event.

## **14. Licence**

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**14.1** Windcave grants to Merchant a non-exclusive, non-transferable licence to use the Windcave Gateway, the Goods, the Software and the Documentation for the term of this Agreement solely for the Permitted Use. Except to the extent you are specifically authorised under this Agreement, Merchant must not sub-license, transfer, assign, lease, licence or sell any of the Windcave Gateway, the Goods, the Software or the Documentation or the right to use the Windcave Gateway, the Goods, the Software or the Documentation.

**14.2** Any unauthorised use or dealings with the Windcave Gateway, the Goods, the Software or the Documentation without the prior written consent of Windcave will be a material breach of this Agreement.

## **15. Rental/Loan of Goods**

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**15.1** Where Merchant rents or is loaned Goods from Windcave, the rented or loaned Goods are at the Merchant's risk and the following applies:

- (a) Legal and beneficial ownership of, and title to, the Goods remains at all times with Windcave;
- (b) Merchant will bear the risk of, and be responsible for, all loss (including theft) of or damage to, the Goods from delivery until they are returned to Windcave;
- (c) Merchant must take reasonable steps to avoid exposure of the Goods to excessive heat, dust and moisture, liquids and electrical and physical shock;
- (d) Merchant must comply with all manufacturer's terms applicable to the Goods (as supplied with the Goods or otherwise notified by Windcave to Merchant from time to time);
- (e) If the Goods are stolen, seized, lost, damaged or require repairs, Merchant must immediately advise Windcave of the theft, seizure, loss, damage or repairs required. Merchant must pay all costs and comply with Windcave's directions in writing in connection with recovering the Goods, repairing any damage or the replacing of any parts (fair wear and tear excepted). Except where Windcave is unable to repair or replace the damaged Goods in a reasonable period of time, Merchant must continue to pay the Fees while the Goods are being repaired or, in the event of theft, seizure or loss, while the Goods are missing. Windcave will not be liable for any loss or damage in relation to the unavailability of the Goods;
- (f) Merchant must not sell, lend, lease, transfer, modify or otherwise deal with the Goods without first obtaining Windcave's written consent. Merchant must not create, or allow to be created, a security interest over the Goods;
- (g) Merchant must allow Windcave reasonable access to inspect the Goods at any time during normal business hours, provided that Windcave first gives Merchant not less than 2 Business Days' notice; and
- (h) Windcave may at any time require rental/loan Goods be replaced with alternative Goods as a result of to changes in regulations, expiration of certifications, and updates being made to certain model numbers.

**15.2** Where the Merchant hires a Device for development or testing purposes or for backup, the Merchant may be required to pay a Bond as advised by Windcave at the Commencement Date, which will be returned to the Merchant once the Device is returned to Windcave. If such a Device is lost or not returned to Windcave upon termination of this Agreement, the Bond will be forfeited and Merchant will be liable for the Replacement Value of the Device as advised by Windcave less the amount of the Bond that has been forfeited.

## **16. Purchase of Goods**

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**16.1** Where Merchant purchases Goods from Windcave, the following applies:

- (a) Title in any of the Goods (excluding any Software and firmware forming part of, or supplied with, the Goods) will pass to Merchant upon Merchant making payment in full for those Goods. Risk in any of the Goods will pass to Merchant upon delivery of those Goods to Merchant;
- (b) Merchant must not sell, lend, lease, transfer, modify or otherwise deal with the Goods without first obtaining Windcave's written consent;
- (c) Where it is unable to pass to Merchant any manufacturer's warranties in respect of any of the

Goods supplied to Merchant under this Agreement, Windcave will hold any such warranties for the benefit of Merchant; and

- (d) If Merchant has not paid Windcave in full for any Goods which have been delivered, Merchant will provide all reasonable authority and assistance to enable recovery of those Goods by Windcave. Merchant will be liable to Windcave for all costs (including legal costs on a solicitor-client basis) incurred by Windcave in recovering the Goods.

## 17. Windcave Support Services

- 17.1 Windcave will provide the Support Services to Merchant as detailed on Windcave's website [www.windcave.com](http://www.windcave.com).

## 18. Entire Agreement

- 18.1 This Agreement (comprising the General Terms and Merchant Services Terms) records the entire agreement between you and Windcave for provision and use of the Goods and Services and supersedes all prior negotiations, representations and agreements between you and Windcave (including, but not limited to, any prior versions of the Agreement). Except where expressly agreed otherwise between you and Windcave, this Agreement will prevail over any conflicting policy or agreement for the provision or use of the Goods and Services.

## 19. Waiver, Severance and Set-off

- 19.1 No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by either party shall in any way limit or waive the right of such party to subsequently enforce and compel strict compliance with the provisions of this Agreement.
- 19.2 Any provision in this Agreement, which is or becomes unenforceable, illegal or invalid for any reason shall be severed and shall not affect the enforceability, legality, validity or application of any other provision which shall remain in full force and effect. Nothing in this Agreement is intended to have the effect of contracting out of any Applicable Law, except to the extent permitted by such Law.
- 19.3 Windcave may at any time set off any amount Windcave owes to you against any amount you owe to Windcave in relation to this Agreement. Any exercise by Windcave of its right under this clause shall not prejudice any other right or remedy available to Windcave, whether under this Agreement or otherwise.

## 20. Assignment and Subcontractors

- 20.1 Windcave may upon written notice to you, assign all or any of its rights and obligations under this Agreement to any person without requiring your consent. You may not transfer or assign any of your liabilities or rights under this Agreement to any other person without Windcave's prior written consent (such consent not to be unreasonably withheld, provided Windcave in its sole discretion, is satisfied as to the suitability of the assignee.)
- 20.2 Windcave may appoint subcontractors to perform any of its obligations under this Agreement.

## 21. Amendment

- 21.1 **Windcave may change or add to these General Terms at any time and to change, delete, discontinue or impose conditions on the use of Services or Goods without notice to you and the need for any acknowledgement, acceptance or any other action from you. Please check our website (<https://www.windcave.com/terms-and-conditions>) or contact us for the latest version of our General Terms. . If you do not accept the changes, you may terminate this Agreement pursuant to clause 11.4. Continued use of the Services or Goods after a change has taken effect constitutes your acceptance of the changes if you have not exercised your right of termination in clause 11.4.**

## 22. Governing Law

- 22.1 This Agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.

## 23. Counterparts

- 23.1 Reserved.

## 24. Notices

- 24.1 Any notice or other communication to be given under this Agreement must be in writing and must be served by one of the following means and in respect of each is deemed to have been served as described:
- (a) By personal delivery – when received by the party.
  - (b) By post by registered or ordinary mail – on the second Business Day following the date of posting to the addressee's registered office.
  - (c) By email – at the time the email leaves the communications system of the sender, provided that the sender does not receive an error message relating to the sending of the email at the time of sending.

The address for Windcave is set out on our website (<https://www.windcave.com/contact-us>).

## 25. Windcave's Discretion and Powers

- 25.1 Unless this Agreement states otherwise, any power, authority, decision, determination and/or discretion which Windcave has by law and/or under this Agreement can be exercised, or not exercised, by Windcave in its absolute discretion. The rights, powers and remedies provided to Windcave under this Agreement are in addition to, and not exclusive of, any rights, powers or remedies provided by Law.
- 25.2 Time shall be of the essence in respect of the performance by you of your obligations under this Agreement. However, if Windcave fails to exercise, or delays in exercising, any right, power or remedy under this Agreement, it will not have, and will not be deemed to have, waived that power, right or remedy. Further, any single or partial exercise of a right, power or remedy by Windcave shall not preclude any other, or further, exercise of that power, right or remedy, or any other power, right or remedy.
- 25.3 You agree that we may, in our sole and absolute discretion refund and/or decline to authorise any Transaction that you submit to us if we believe the Transaction is in violation of any Applicable Laws, Windcave's AML/CFT policies and procedures, and/ or applicable Sanctions. You agree to be liable for all costs related to illegal transactions including any investigations required.

## 26. Interpretation

- 26.1 **Interpretation:** In this Agreement, unless the context indicates otherwise:
- (a) The meanings of capitalised terms are set out in definition section;
  - (b) the singular includes the plural and vice versa;
  - (c) clause and other headings are for reference only and will not affect this Agreement's interpretation;
    - (i) the term **includes** or **including** (or any similar expression) is deemed to be followed by the words without limitation;
    - (ii) references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons,

- governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (iii) references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any bylaw, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (d) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (iv) all monetary amounts are stated exclusive of GST and in New Zealand dollars;
- (v) in the event of any inconsistency between the terms of any of the following, they will have precedence in the descending order of priority set out below:
- (i) General Terms (including the definition section);
- (ii) Merchant Terms;
- (iii) the terms of any specific services provided by Windcave to the Merchant as set out in development work agreements or similar;
- (iv) the Merchant Operating Guide;
- (v) the Documentation; and
- (vi) the Merchant's purchase orders.

#### Definitions:

In this Agreement, unless the context indicates otherwise:

**Account2Account** is a proprietary Windcave payment solution that allows Merchant to accept online payments directly into its bank account by creating one-off online payments using the online banking system.

**Acquirer** means a bank or any financial institution or a card issuer of financial or non-financial transactions which receives and transmits Transactions via the Windcave Gateway.

**Acquiring Charge** means the amount charged by Windcave for Transactions in addition to the Interchange Fee.

**Active Device** for Tap to Pay means eligible devices that have been used to request a Transaction in the previous month.

**Additional Merchant Account Fee** is the fee for any additional merchant accounts loaded to the Windcave Host on request by the Merchant.

**Agent** means any third party engaged by you to assist you in performing your business activities. Such Agent may store, process, transmit or have access to Card or Transaction information and includes but is not restricted to gateway provider/data processors or data storage entities.

**AMSF** means the average of the 6 most recent MSF payments per Merchant facility (excluding any month where Minimum Monthly MSF payments are made) which were (or are) payable by you (to be determined by Windcave), or if fewer than 6 MSF payments have been (or are then) payable by you, the average of all MSF payments per Merchant facility (excluding any month where Minimum Monthly MSF payments are made) which were (or are) payable by you (to be determined by Windcave).

**Appendices** means the further terms and conditions attached to this Agreement (if applicable) and applying to the Merchant Services.

**Applicable Law** means all relevant Law, including all statutory, Regulatory Requirements and common laws.

**Authorisation** means confirmation that the Cardholder has sufficient funds available, and the Card has not been reported as lost or stolen.

**Blended MSF** means a single blended MSF for processing all Transactions.

**Bond** is the amount advised by Windcave, which is payable by the Merchant for Devices loaned for back up or development purposes, to be returned to the Merchant upon return of the Devices to Windcave.

**Business Day** means any day of the week except Saturday, Sunday or a statutory holiday in Auckland, New Zealand.

**Card** means each of the Payment Schemes, Debit Cards or any other card or payment instrument as approved by us for the purposes of this Agreement.

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

**Card Issuer** means a bank or other institution that has a licence agreement with a Payment Scheme to issue one or more Cards.

**Card Number** means the primary Cardholder account number that is assigned to a Card.

**CNP** means a Transaction where the Card is not present.

**Commencement Date** means the date you use our Services and/or Goods.

**Cardholder Data** means either of any information, document or an account number relating to a Cardholder, a Cardholder's nominated Card Number or a Transaction.

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

**Chargeback** means an obligation to return to a Cardholder an amount relating to a previously completed Transaction in accordance with the relevant Payment Scheme Regulations.

**Confidential Information** means, in relation to either party, any information: (a) relating to the terms of this Agreement; (b) relating directly or indirectly to research or development by, accounting for, or the marketing of, the business of that party or its suppliers or Merchants; (c) disclosed by that party to the other party on the express basis that such information is confidential; or (d) which might reasonably be expected by the other party to be confidential in nature;

**Data Breach** means any event whereby your business, or any Agent facilitating the transmission, storage or acceptance of 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.

**Debit Card** means any card issued by a financial institution used by a Cardholder to access a cheque or savings account and includes Visa and MasterCard debit and pre-paid products where the transaction is treated as a domestic Transaction.

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

**Default Interest** means interest at the rate of 5% above the base lending rate charged by Windcave's bankers to Windcave from time to time. This is calculated daily from the due date until the actual date of payment.

**Delivery** takes place when the Merchant receives the Goods from Windcave, or, in the case of returns, when the Goods arrive at Windcave's premises.

**Developed Works** means any work or thing developed or created by or on behalf of Windcave under or in connection with this Agreement.

**Documentation** means any handbook, user, training or system manuals for the Windcave Gateway or Goods (whether in printed or electronic form) which describes and provides guidance on the use of the Windcave Gateway or Goods.

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

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

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

**Fees** means the fees payable by you to Windcave for the Services or Goods.

**Establishment Fee** is the fee incurred upon activating the Services.

**Force Majeure Event** means: (a) fire, flood, epidemic or pandemic, elements of nature or other acts of God; (b) any outbreak or escalation of hostilities, war, riots or civil disorders in any country; (c) any act or omission of any government authority; (d) any labour disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); (e) the non-performance by a third party for any similar cause beyond the reasonable control of such party, including failures or fluctuations in telecommunications or other equipment such as described in clause 13.1 of the General Terms; or (f) any machine, data processing system or transmission link failing to work, beyond the reasonable control of the party.

**Forensic Review** means a review by Windcave or an authorised representative of Windcave after a suspected or known Data Breach has occurred. This review may require physical site access and access to all storage and transmission systems.

**General Terms** means these general terms and conditions.

**Gateway Services** means the Windcave Gateway services.

**Goods** means any Device, Terminal, product or equipment supplied to you by Windcave, and includes any advertising or promotional material and Documentation.

**Improperly Deposited Funds** means funds that do not rightfully belong to Merchant.

**Incident Response Plan** means a pre-defined set of procedures and actions to be initiated following a Data Breach, or suspected Data Breach.

**Insolvency Event** means, in respect of any person, that person: (a) being placed into bankruptcy, liquidation, administration, receivership or statutory management or having an official assignee, liquidator, receiver, trustee, manager, administrator, statutory manager or similar appointed in respect of it or all or any of its business or property; (b) being unable, or presumed by law unable, to pay its debts as they fall due; (c) entering into an assignment for the benefit of or entering into or making any arrangement or composition with, its creditors; (d) being subject to a resolution or any proceeding for the winding up or liquidation of

that person (whether on a voluntary or involuntary basis) other than for a bona fide solvent reconstruction on terms previously approved in writing by Windcave and other than where such resolution or proceeding is formally discharged or dismissed in full within 10 Business Days of the initiation thereof; or (e) being subject to any event which is analogous to any of the events listed in paragraphs (a) to (d).

**Interchange Fee** means the fee that Windcave pays to the issuers of Payment Scheme Cards for Transactions accepted at the Merchant facility when a Card is used. This is a variable fee depending on the: (a) nature of the transaction; (b) card type, and (c) processing environment of the transaction.

**Law** means the laws and regulations of New Zealand which are relevant or applicable to the Agreement and/or any duties, rights, undertakings and obligations of Windcave and/or the Merchant which relate to the provision of the Windcave Goods and Services).

**Intellectual Property** means registered and unregistered trademarks (including logos and trade files), domain names, copyright, patents, petty patents, utility models, registered and unregistered designs, circuit layouts, rights in computer software, databases and lists, Confidential Information, software (whether in object code or source code), and all other rights anywhere in the world resulting from intellectual activity.

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

**Manual Transaction** means a Transaction which is processed through a Terminal (hand keyed) or a virtual terminal which is CNP, PAN or MOTO.

**Mark** means, in respect of any Payment Scheme any trademark, logotype, symbol, hologram, design or other similar distinguishing emblem used by the Payment Scheme.

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

**Merchant** means the entity or person that engages Windcave for the provision of Goods and/or Services and **Customer, you** and **your** have corresponding meaning. Merchant includes the entity or person's employees, contractors, agents and nominated subsidiaries (where applicable).

**Merchant Account** is a type of financial account that allows a Merchant to accept and process electronic payment transactions using the Merchant Services.

**Merchant Operating Guide** means the Windcave "Merchant Operating Guide" found at <https://www.windcave.com/document/Windcave-Merchant-Operating-Guide.pdf> and includes any subsequent amendments, or variations.

**Merchant Services** means the merchant services provided by Windcave to you.

**Merchant Terms** means the Merchant Services Terms and includes the Appendices.

**MSF** means the sum of the Interchange Fee and Acquiring Charges payable by you to Windcave monthly pursuant to clause 37.2, as calculated under clause 37.3 of the Merchant Terms.

**Minimum Monthly MSF** means the Minimum Monthly MSF for a transaction type that Windcave advises you will be the minimum fee payable under this Agreement. Initially, the Minimum Monthly MSF for a transaction type is the amount advised by Windcave.

**Nominated Bank Account** means the bank account(s) you ask us to debit, credit and settle amounts to in accordance with, this Agreement noting that it is possible to have different accounts for debiting of fees and crediting of settlements.

**PAN Entry** is a CNP Transaction where the Card details are manually entered into the Terminal or another electronic means which Windcave has approved.

**Payment Scheme** means Visa, or MasterCard, UnionPay International, ALIPAY, WeChat, AMEX, DINERS or any other scheme established to manage and establish standards and procedures for the issuance and acceptance of Cards and the settlement of Transactions, as provided by Windcave.

**Payment Scheme Regulations** means any standards, procedures, rules, regulations, programmes or requirements of, or issued by, Payment Schemes.

**Payment System** means any Payment Scheme or bank which Windcave uses, engages, relies on, or requires, to fully or partly comply with all or any of its obligations under this Agreement.

**Payline/Payline Portal** means Windcave's web-based payment management client set up that permits Merchant to process Transactions manually, process refunds, set up recurring payments, generate reports, and review for Transaction errors.

**Permitted Use** means the transmission to, and receipt from, an Acquirer of data relating to the Windcave Gateway and expressly excludes use for the processing of Transactions of, or for the benefit of, any person other than Merchant.

**PCI DSS** means the Payment Card Industry Data Security Standards global standards. [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org).

**PCI SSC** means Payment Card Industry Security Standards Council.

**PCI Standards** means any standards issued or administered by PCI SSC.

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

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

**Prepayment** means a payment that is made for future delivery of goods or services by the Merchant.

**Prepayment Transactions** means a Prepayment and includes any Transaction where goods or services are not supplied at the time payment is taken or any other Transaction which has a deferred service delivery model and for which payment is taken in advance.

**Privacy Policy** means Windcave's privacy policy at [www.windcave.com/privacy-policy](http://www.windcave.com/privacy-policy) as updated from time to time.

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

**Refund** means, in respect of a Transaction, the reversal in accordance with the Merchant Operating Guide of that transaction by generating a voucher as a refund for goods and/or services purchased from you by a Cardholder and paid for via a Transaction.

**Regulatory Requirements** means all applicable statutes, regulations and rules in force from time to time including and any other mandatory rules, codes of conduct and codes of practice stipulated by any regulatory, legislative or governmental authority (whether established pursuant to statute or otherwise) to which any party is subject from time to time.

**Related Company** has the meaning given to that term in section 2(3) of the Companies Act 1993 (New Zealand) except that all references in that definition to a "company" will be deemed to include a company or body corporate incorporated outside of New Zealand;

**Replacement Value** is the value of the Devices loaned for back up or development purposes as advised by Windcave.

**Sales Amount** means the total value of all Transactions for the particular transaction type which were completed by you during the previous calendar month.

**Sanctions** mean a set of measures imposed by the competent Sanctions Authorities against states, natural and legal persons as well as other subjects. Windcave, as a financial institution, adheres to Sanctions restrictions set by the Sanctions Authorities which would include asset freezes, refusing to conduct Transactions, refraining from contracts with sanctioned entities/individuals.

**Sanctions Authorities** means the United Nations, the European Union, the United States of America, the countries where Windcave is operating in as well as other countries and/or international organizations determined by Windcave.

**Security Standards** means PCI Standards including PCI DSS and any data protection or data security standards issued by an Acquirer which receives and accepts Transactions using the Windcave Gateway from Merchant;

**Services** means the services provided by Windcave to you and includes the Gateway Services and Merchant Services

**Software** means the software and other related Goods which:

- (a) form part of the Windcave Gateway; and
- (b) is owned or licensed by or developed by, or on behalf of, Windcave and supplied to Merchant, including all upgrades, updates, alterations and modifications and other changes to such software by or on behalf of Windcave from time to time, but excluding any third-party software and firmware forming part of, or supplied with, the Windcave Gateway.

**Support Services** means and includes online help, and telephone support that Windcave provides to Merchant;

**Surcharge Fee** means a fee that you apply to a Transaction, for acceptance of a Card for payment, which fee is not applied when payment is made via other payment mechanisms.

**T** means the number of months remaining per Merchant facility before the end of the Term (as the case may be).

**Tax** means all forms of tax, levy, impost, duty, charge, fee, deduction or withholding of any nature and whatever called wherever imposed, levied, collected or withheld or assessed by any government agency in New Zealand.

**Tap to Pay** Tap to Pay allows merchants to accept contactless card or mobile wallet payments from their customers using eligible devices.

**Term** means one month.

**Terminal** or **Device** means any electronic device or terminal (including where applicable a portable electronic device or equipment (such as cables and peripherals) 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 or processes Transactions using Cards and for initiating the credit or debit of funds to facilitate the settlement of those Transactions; and
- b) is approved by Windcave as a "Terminal" for the purposes of this Agreement.

**Third Party Network** means any third-party network used by Windcave to process non-scheme transactions directly to Card Issuers via local debit network. A monthly recurring fee applies for this Service per merchant ID.

**Tokenized Data** means data for which Windcave has substituted a sensitive data element with a non-sensitive equivalent that has no extrinsic or exploitable meaning or value.



**Transaction** in the context of the Gateway Services means a request from the Merchant (or Merchant's customer) to initiate a transaction through the Windcave Gateway. A Transaction includes disputed and declined transactions and transactions which could not be completed for any reason. **Transaction** in the context of the Merchant Services includes a sales transaction (being the supply of goods or services or both), refund transaction or cash transaction in which a Card or Card Number of a Card is used and which is processed by you manually or electronically.

**Transaction Receipt** means an electronic or paper record of a Transaction (or a copy) generated at the point of sale and is 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.

**Unbundled MSF** means the MSF is unbundled, so you are charged the Interchange Fee applicable for each Transaction, plus an Acquiring Charge. The actual MSF you end up paying depends on the mix of transactions accepted through your Merchant facility.

**Valid** means a Transaction which has been completed in accordance with and does not breach any provision of this Agreement and **Valid Transaction** and **Invalid** has a corresponding meaning.

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

**Windcave, we, our or us** means Windcave New Zealand Limited, a New Zealand entity incorporated under the Companies Act 1993 and includes its successors and assigns.

**Windcave Gateway** means the gateway provided by Windcave for the transmission of data relating to Transactions between a Merchant and an Acquirer, incorporating the Software and including access (via the internet) to the Windcave Host and the Support Services.

**Windcave Host** means the Windcave host server to which Merchant may be connected using the Software and which is in turn linked to an Acquirer to enable Transactions to be processed in real time through the Windcave Gateway.

**Windcave Logo** means the Windcave logo supplied by Windcave to Merchant (as may be updated from time to time by Windcave).

**Your Bank** means the registered bank (as defined in the Reserve Bank of New Zealand Act 1989) 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.

## MERCHANT SERVICES TERMS

These Merchant Services Terms govern the supply of any Merchant Services by Windcave to you. You also agree to be bound by and comply with the Merchant Operating Guide.

### 27. Services and Term

27.1 If you wish to process other types of Merchant Services transactions not currently approved by us, you may make a request to process those transactions to Windcave. If Windcave accepts your request any relevant additional terms, Appendices and corresponding variation in pricing will apply from the earlier of: (a) the date Windcave advised you in writing of its acceptance; or (b) the date you commence processing such transactions.

### 28. Windcave's obligations

28.1 Subject to this Agreement, we will provide you with the Merchant Services

28.2 We will:

- (a) pay all such moneys, and do all such acts, which we believe are reasonably necessary to ensure that an amount which is equal to the total dollar amount of a Valid Transaction (as entered in the Terminal through which the Transaction was facilitated) as contemplated by this Agreement is credited to your Nominated Bank Account; and
- (b) give you access to the Payline Portal.

28.3 Where settlement occurs on a day other than a Business Day, we will use reasonable endeavours to ensure that you receive settlement on the next Business Day.

28.4 Provided that, if a Payment Scheme fails or neglects to pay to us an amount which relates to a Valid Transaction, or there is a delay in the Payment Scheme paying an amount to us which relates to a Valid Transaction, then you acknowledge and agree that Windcave will also be unable to make the payment which relates to that Valid Transaction to you until we have received the relevant amount from the Payment Scheme.

28.5 Where we believe that it is reasonably justified, we may, in our sole discretion, immediately re-route Transactions to a suspense account. In such cases we will make the proceeds in the suspense account available to you when we are satisfied that we are able to do so. You have no ownership of any funds transferred to a suspense account until those funds are transferred to your Nominated Bank Account, and no interest is payable on the funds while they are held by us.

28.6 We are under no obligation to make a payment to any person, or to do any other act, in respect of a Transaction which is not Valid. Without limitation, a Transaction is invalid if it is illegal, unauthorised, fraudulent, in breach of Payment Scheme Regulations, in breach of the Agreement, in foreign currency (unless we have previously agreed to process this for you) or where the Cardholder has not received the goods or services purchased.

### 29. Debit Transactions:

29.1 You must only use Terminals to process Transactions and you must comply with the Debit Transactions requirements in Appendix 2.

29.2 We may freeze and/or terminate processing of Transactions for you, in accordance with this Agreement, while maintaining processing for other Card Transactions.

## 30. Your Obligations

30.1 You must:

- (a) provide accurate and complete information (including personal information) to enable us to provide you with Services;
- (b) keep the information that we hold about you (the directors, the authorised signatories, and beneficial owners) and your business current and must promptly inform us of any changes (and failure to inform us may result in Transactions being rerouted to a suspense account in accordance with clause [28.5](#));
- (c) ensure you maintain best practice risk management functions including at least risk management procedures such as fraud control measures, policies and procedures for sensitive data storage that complies with the Security Standards and understand fraud and chargeback risks and liabilities and have procedures for tracking and monitoring fraud allegations and losses.

30.2 If Windcave deposits Improperly Deposited Funds in your bank account or Nominated Bank Account, you must return them in full within 5 Business Days of a written request to do so by Windcave. If you fail to comply, Windcave may immediately suspend services to you until you return the Improperly Deposited Funds. You will be liable to Windcave for the Improperly Deposited Funds, and all costs (including legal costs on a solicitor-client basis) incurred by Windcave in recovering the Improperly Deposited Funds.

30.3 In relation to the Merchant Services, we may, acting reasonably, require you to maintain a minimum credit balance in any Nominated Bank Account during the term of the Agreement. Any such required minimum credit balance will be notified by us to you from time to time.

## 31. Your Obligations to Cardholders

31.1 You have a number of obligations to Cardholders, including the types of Card you must accept and the information that must be made available to a Cardholder – see Appendix 3.

## 32. Data Handling

32.1 You must ensure that your business fully complies with the Security Standards. You must maintain an Incident Response Plan for immediate reporting and handling of any exposure of Cardholder Data at your business.

32.2 If you know of or suspect a Data Breach at your company or that of any Agent, you must:

- (a) report the Data Breach immediately to Windcave;
- (b) 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;
- (c) implement and follow the Incident Response Plan;
- (d) maintain a rigorous audit trail of all actions taken to isolate and rectify the event;
- (e) assist Windcave to the best of your abilities including providing detailed statements and schedules of Card accounts exposed by the Data Breach;
- (f) allow Windcave employees, contractors, or those of any Payment Scheme, acting reasonably, full access to your systems and databases for the purpose of Forensic Review, to ascertain the cause and impact of the exposure;
- (g) undergo a full PCI DSS accreditation to be allowed to continue processing Transactions.

**32.3** You are liable for all costs, charges and/or fines imposed by the Payment Schemes, Applicable Law or regulators, due to any Data Breach, including but not restricted to:

- (a) any fines for Data Breach including for a failure to report the Data Breach in a timely fashion;
- (b) any costs levied by the Payment Schemes for monitoring and/or reissue of credit cards compromised by the Data Breach;
- (c) all costs for Forensic Review including following termination of this Agreement; and
- (d) costs for corrective action to address the cause of the Data Breach and for re-certification with PCI DSS.

**32.4** You must not sell, purchase, provide or exchange any information or document relating to a Cardholder, a Cardholder's account number or a Transaction to any person other than us, the Card Issuer or as required by law.

**32.5** You must ensure that any full card-read data in respect of Cards accessed by you in connection with a Transaction (or otherwise in connection with the Agreement) is stored only on an electronic file in a secure environment with restricted access in compliance with the Security Standards and Windcave's compliance requirements, for the sole purpose of providing documentation for exception processing. You must not record, store, replicate or otherwise use full card-read data for any other purpose.

### **33. Chargebacks, Disputes and Invalid transactions**

**33.1** You will always be liable, as detailed in the Merchant Operating Guide and this Agreement, for the full amount of any Chargebacks validly claimed by a Cardholder. Windcave may, at its discretion, charge you a \$25.00 fee for each individual Chargeback you incur.

**33.2** If you process an Invalid Transaction, you acknowledge that the Card Issuer and, in the case of a Refund, Your Bank, may dishonour the Transaction and you will be liable for the full amount of the Invalid Transaction.

**33.3** Where the amount of an Electronic Off-Line Transaction exceeds the Electronic Off-Line Payment Limit and/or the Cardholder's account has insufficient funds, the Card Issuer may dishonour the whole amount of the Electronic Off-Line Transaction and you will be liable for the full amount of the Electronic Off-Line Transaction.

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

- (a) the total dollar amount of any Refund you have generated;
- (b) any amount that was credited to your Nominated Bank Account in error, or because of any error, mistake or omission;
- (c) any amount was credited to your Nominated Bank Account in respect of a Transaction:
  - (i) which is not Valid;
  - (ii) in respect of which the Cardholder or Windcave disputes liability for any reason;
  - (iii) any amount in respect of which the Cardholder asserts a claim for set-off, or a counterclaim, against Windcave for any reason;
- (d) any fee, cost, charge, liability, or expense or other amount becomes payable by you to Windcave (including MSFs, penalty fees, Chargebacks, fines imposed by Payment Schemes and amounts payable under clause 33);

(e) any stamp duty (if applicable), postage cost, commission, charge, fee, liability, expense or other amount being incurred by Windcave in connection with the Agreement; or

(f) if any other amount that is owing to Windcave by you, that amount.

**33.5** You must not make any warranty or representation on our behalf without each time obtaining our prior written consent.

### **34. Returns and Refunds**

**34.1** You must establish a policy for the exchange or return of goods for sales Transactions and ensure customers are aware of that policy prior to the Transaction. This policy must be consistent with the Merchant Operating Guide.

**34.2** For any Refund you must always comply with the Merchant Operating Guide, and:

- (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 Refund;
- (c) you may only give a Refund by means of a Transaction processed to the same Card on which the original Transaction was made, a credit note issued by you or an exchange of the goods, and not in cash or by cheque;
- (d) your Refund policy must detail the process for obtaining a Refund for both online Transactions Terminal Transactions.

### **35. Records and use of Information**

**35.1** You must allow Windcave to inspect and examine your books of account and records (including, any records in respect of Transactions and Refunds) upon 3 Business Days' notice and you must provide Windcave with any other information which Windcave may reasonably request, including (but not restricted to) your audited financial statements and customer due diligence information. If you are unable to supply the requested Transaction information the transaction may be charged back to you by Windcave.

**35.2** You authorise Windcave to create and maintain records in respect of you and your business and to collect information about you from any person or entity who Windcave deems appropriate.

**35.3** You authorise Windcave to disclose and use any relevant information about you held by Windcave in accordance with the Privacy Policy. Notwithstanding clause 21.2, Windcave may amend the Privacy Policy at any time by notice by posting a new version on Windcave's website [www.windcave.com/privacy-policy](http://www.windcave.com/privacy-policy). Such new version will become effective 5 Business Days after such notice without the need for any acknowledgement, acceptance or any other action from you.

**35.4** You agree to comply with all record retention provisions under Applicable Law, and subject to the Security Standards, you will retain a copy of all Transactions for a minimum of 24 months from the date of each Transaction. You agree when discarding or destroying any Transaction Records after the time for retaining them has passed, you must do so in a secure manner in accordance Applicable Laws and Security Standards.

**35.5** You agree to lodge Transactions with us for settlement in accordance with the Merchant Operating Guide and, in the case of a Transaction processed through a Terminal, immediately by entering the Transaction.

### **36. Prepayment Credit Card Sales**

**36.1** If you process Prepayment Transactions, you may be required to provide Windcave with regular financial data information to keep

us informed of your financial viability. This information may include the following:

- (a) cash flow statements clearly segmenting Prepayment Transactions. Statements will identify an appropriate running account balance of Prepayment Transactions, including actual results for the quarter just ended and projections on a 12-month rolling basis;
- (b) 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 Transactions cash flow statements you have provided periodically;
- (c) immediate notice to Windcave of any significant increase or decrease in the level of Prepayment Transactions;
- (d) liquidity and net worth reporting;
- (e) estimate or actual transaction totals booked on prepaid basis;
- (f) changes to your point-of-sale procedures for Authorisation, Refund policy and transaction flow.

**36.2** 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.

**36.3** If you process Prepayment Transactions, Windcave may, at its discretion from time to time, specify a limit allowed for Prepayment Transactions.

### **37. Merchant Services Fees Payable**

**37.1** Windcave will advise you of the Rate which will be used to calculate the MSF and may change the Rate at any time by giving you 30 days' written notice. The Rate will be calculated on the basis of a Blended MSF or Unbundled MSF option as advised by Windcave. Windcave reserves the right to require you to set up a separate merchant facility for your Card Not Present transactions.

**37.2** You must pay Windcave the MSF each month as calculated in clause 37.3. The MSF is payable as specified on the invoice. Windcave will automatically direct debit the MSF from your Nominated Bank Account pursuant to clause [2.2](#).

**37.3** Subject to clause 37.4, the MSF is calculated as follows:

- (a) the MSF for each transaction type payable for each month is equal to the Rate for that transaction type multiplied by the Sales Amount for that transaction type, minus the aggregate of:
  - (i) the total value of all Refunds for the particular transaction type delivered to Windcave by, or in respect of, you during the previous calendar month; and
  - (ii) any amount debited to your Nominated Bank Account in respect of the particular transaction type during the previous calendar month pursuant to clause [2.2](#), if the amount was previously used to determine an 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 37.3.

**37.4** If any individual MSF calculated under clause 37.3 is less than the Minimum Monthly MSF applicable to the relevant transaction type, the amount for the purposes of clause 37.3 will be deemed to be the applicable Minimum Monthly MSF.

### **38. Suspension and Termination**

**38.1** Windcave, in its sole and absolute discretion, may suspend or freeze all or part of the Merchant Services or hold the funds for settlement if it believes on reasonable grounds that you have or may breach this Agreement. When exercising this right, we are not required to notify you in advance. When we suspend the Merchant Services you will not be able to process any Transactions and we are not required to accept any Transactions processed by you. We

may during the period of suspension or freezing of the Merchant Services terminate the Merchant Services under clause 11.2.

**38.2** We may also suspend the availability of various types of Cards for such period or periods as we may consider appropriate if we reasonably consider it is prudent to do so or a financial institution has suspended the use of those types of Cards. We will use reasonable endeavours to give you notice of suspension of Card types, or settlements but are not required to notify you of the suspension of settlements or transactions based on the risk assessed by Windcave.

**38.3** We may also terminate the Merchant Services at any time in accordance with clauses 11.1 and or 11.2.

**38.4** You may, with or without cause, terminate either:

- (a) the whole Agreement; or
- (b) any of the Merchant Services if you no longer wish to process the particular types of transactions;

by giving Windcave no less than 3 months' prior written notice, provided that if you terminate the Agreement or any of the Merchant Services within the Term, you will be required to pay the termination fee set out in clause 39. If the current term is less than 3 months either party may terminate this Agreement in whole or terminate the provision of Merchant Services (if applicable) on not less than 1 month's prior written notice.

**38.5** You will be deemed, at Windcave's discretion, to have terminated the Merchant Services if you commence processing any Transaction with another supplier and cease processing with Windcave.

**38.6** If Windcave increases the Rate in accordance with clause 37.1 and you object to that increase in writing to Windcave and:

- (a) such increase is not due to you failing to achieve the agreed average transaction size; or
- (b) if you are using a Terminal processing method and such increase is not due to you increasing your percentage number of Manual Transactions so that the number of Manual Transactions exceed 5% of the total number of Terminal transactions you process in any three-month period;

you may terminate the Merchant Services by giving Windcave one month's prior written notice and no termination fee will apply. If you terminate under this clause 38.6 then you will not be required to pay any damages under clause 39.1.

**38.7** The termination of this Agreement shall not affect any right held, or obligation incurred, by either Windcave or you prior to the date of termination including your continued liability for Chargebacks.

### **39. Termination Fee**

**39.1** Subject to clause 11.4 of Part B and clause 38.6, if you terminate, or are deemed to have terminated, the Merchant Services before the expiry of the Term (other than as a direct result of Windcave breaching this Agreement), or Windcave terminates this Agreement because you have breached this Agreement, you will immediately pay to Windcave (in addition to any other amounts which are payable by you under this Agreement) by way of liquidated damages (which you agree is a fair a reasonable estimate of Windcave's loss) an amount per Merchant facility which is equal to the greater of: (a) (.25 x AMSF) x T; or (b)\$400.

### **40. Acknowledgement**

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

## APPENDIX 1

### CARD NOT PRESENT TRANSACTIONS

#### A. Application

- (a) This Appendix forms part of and is subject to the general terms and conditions set out in the Merchant Services Terms and applies to all CNP and/ or E-Commerce Transactions (as applicable).
- (b) CNP include the following types of transactions:
- (i) Mail or telephone order transactions (MOTO);
  - (ii) E-Commerce Transactions;
  - (iii) Recurring Transactions;
  - (iv) Instalment Transactions;
  - (v) PAN Entry Transactions.
- (c) At any time Windcave may disable your ability to process any one or more of the transaction types in (b) above without cause and with immediate effect.

#### B. Acceptance of Risk

- (a) **You accept risk:** By processing CNP you accept the increased risk of fraud or errors arising from where Card details are entered manually and/or the Card is not physically present, and the Cardholders identity or authority may be later called into question. You 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 and you must maintain best practice risk management functions;
  - (ii) you accept all risks associated with processing a CNP including, but not limited to, all costs, fines or penalties imposed, loss, or liability incurred by you or any other person in relation to the processing of that transaction;
  - (iii) as with any other Card Sales Transaction, an authorisation approval and code provided by Windcave of a CNP does not in any way guarantee payment by Windcave for that transaction. Windcave will in no way be liable for any Chargeback, cost, fine or penalty imposed, loss or liability incurred by you or any person in processing that transaction;
  - (iv) where a CNP 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 you in accordance with the Agreement.

#### C. E-Commerce Transactions

- (a) **Website Information:** Before accepting any E-Commerce Transaction you must ensure your website displays all the following information:
- (i) consumer data privacy policy;
  - (ii) security capabilities and policy for transmission of Card details;
  - (iii) complete description of the goods or services offered;
  - (iv) Cancellation and Refund/return policy;
  - (v) customer service contact, including email address, or telephone number;

- (vi) transaction currency (e.g. New Zealand dollars);
- (vii) export restrictions (if known);
- (viii) delivery policy;
- (ix) country of merchant's residence;
- (x) Merchant responsibilities in handling disputes;
- (xi) Payment Scheme brand marks for Cards accepted by you wherever payment options are presented; and
- (xii) 3DS brand marks on payment pages if participating in these authentication programs.

(b) **Your Obligations:** To process E-Commerce Transaction you must:

- (i) Ensure you have an internet connection and website;
- (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) comply with the Security Standards and any requirements notified to you by us and the Payment Scheme Regulations regarding the presentation and security of your website. You must provide us with reasonable access to view, monitor and audit the pages of your website;
- (iv) ensure all E-Commerce Transactions are captured and transmitted only using the Windcave Gateway and no Card payment details may be accepted or transmitted via email;
- (v) ensure you do not violate Applicable Laws governing the sale of prescription medicines, including controlled substances or other regulated products; and
- (vi) advise us in writing at least 10 Business Days prior to changing your: internet address; email address; telephone number; website name or nature of business.

#### D. Definitions

**Definitions:** In this Appendix, unless the context otherwise requires:

**E-Commerce Transaction** or **Electronic Commerce** 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.

**Recurring Transaction** is a transaction for which a Cardholder grants written permission to you to periodically charge their Card for recurring goods or services provided.

**3DS (3D Secure)** is an authentication method that provides an additional layer of authentication for credit card transactions, protecting against fraudulent actors. 3DS asks Cardholders to verify their identity with the Issuer during payment.

## APPENDIX 2

### DEBIT TRANSACTION REQUIREMENTS

**You must:**

- (a) use reasonable care in processing a Transaction to detect forged or unauthorised signatures or the unauthorised use or forgery of a Card.
- (b) comply with specific requirements set out in the Merchant Operating Guide or otherwise notified by us in writing to you.
- (c) immediately give the Cardholder a copy of the Transaction Receipt if requested. The Transaction Receipt must include the following:
  - (i) type of account;
  - (ii) type and amount of the Transaction;
  - (iii) date of the Transaction;
  - (iv) time of the Transaction;
  - (v) Transaction record number; and
  - (vi) confirmation that the Transaction has been accepted or approved.
- (d) prominently and clearly inform the Cardholder of your identity so that the Cardholder can readily distinguish you from any supplier of goods or services to you.
- (e) comply with all Applicable Laws, any obligations in the Agreement, Payment Scheme Regulations and any direction from us in carrying out your obligations in processing Transactions under the Agreement.
- (f) ensure that each Transaction is recorded in New Zealand Dollars.
- (g) process all Debit Transactions and Card Transactions (including transactions using debit and pre-paid products where the transaction is treated as a credit card transaction) through us, except where we have agreed otherwise.

You must not process a Transaction unless the Cardholder's identity is verified using the correct PIN or Cardholder signature other than a contactless transaction where permitted. You must notify the Cardholder that you are responsible for:

- (a) the sales Transaction including any goods or services that are the subject of the sales Transaction;
- (b) all customer service relating to the sales Transaction;
- (c) dispute resolution in connection with the sales Transaction; and
- (d) performance of the terms and conditions of the sales Transaction.

If electronic processing is not available for any reason, you must process Transactions in accordance with the Merchant Operating Guide and the Merchant Terms.

When completing an Electronic Off-Line Transaction, you must:

- (a) ensure that if the Transaction is stored within a point-of-sale device attached to the Terminal, such point-of-sale device is secure against unauthorised access;
- (b) not process any Transactions that exceed the Electronic Off-Line Payment Limit;
- (c) not use two or more Electronic Off-Line Transactions to effect one Transaction if the amount of the Transaction exceeds the Electronic Off-Line Payment Limited; and
- (d) retain a signed copy of the Transaction Receipt for at least 24 months.

In all circumstances when an Electronic Off-Line Transaction is conducted, it must not be used to:

- (a) provide a Cardholder with cash;
- (b) process a Transaction where the card's magnetic stripe or chip is unable to be read by the Terminal;
- (c) process a Transaction which has been previously declined or which could not be completed as a result of Cardholder PIN errors; or
- (d) process a Transaction away from your normal site of business.

### APPENDIX 3

#### YOUR OBLIGATIONS TO CARDHOLDERS

You must:

- (a) accept any Card as approved by Windcave without discrimination unless you are aware of any valid reason not to do so;
- (b) if you add a Surcharge Fee to your advertised charges when a Cardholder chooses to pay with a Card:
  - (i) clearly display notices, signs or decals at your premises as well as a notice next to your point of sale disclosing that you will apply a Surcharge Fee when payment is made by Card and 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 apply when payment is made by Card;
  - (ii) clearly display, to the Cardholder, as part of the Transaction environment or process, that if they choose to pay with a Card and there is a Surcharge Fee on the Transaction, the Cardholder has an opportunity to cancel the Transaction;
  - (iii) ensure the Surcharge Fee which you charge 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 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 Payment Scheme or by Windcave;
  - (vi) comply with all Applicable Law, regulation and applicable Payment Scheme requirements regarding the Surcharge Fee, and indemnify Windcave for your failure to do so;
  - (vii) not accept a Transaction for giving a Cardholder cash except where the Card is being used is a Debit Card and it is a Debit Transaction conducted through a Terminal unless we have advised you that a particular Card or Payment Scheme cannot be used to give cash;
  - (viii) perform all obligations to the Cardholder in connection with a sale before notifying Windcave of the Card Sales Transaction;
  - (ix) 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 completing the Transaction, or as specifically required by Applicable Law;

- (x) maintain systems, records and media containing Cardholder Data or Transaction information in accordance with the Security Standards. and any information accessible from the internet is protected by a firewall and any electronic data is held in encrypted form.

**You must not:**

- (a) make any representation in relation to the goods and/or services provided by you that would bind Windcave or any of the Payment Schemes; or
- (b) indicate or imply that Windcave or any of the Payment Schemes endorses or sponsors any of your goods and/or services; or
- (c) refer to Windcave, or any of the Payment Schemes stating eligibility to purchase the goods and/or services provided by you;

**You must prominently disclose to the Cardholder:**

- (a) your identity (at all points of interaction with the Cardholder);
- (b) your full responsibility for the Transaction, the products and/or services, the terms and conditions of sale, customer service and resolution of disputes;

You must attempt to resolve any dispute with a Cardholder directly without the involvement of Windcave. Windcave is not a party to any agreement made between yourself and a Cardholder and is a payment processing provider only.

#### APPENDIX 4

##### DYNAMIC CURRENCY CONVERSION ("DCC")

###### 1) DCC

- (a) This Appendix sets out the terms and conditions of DCC and applies if you have opted to add DCC to your Merchant Services.
- (b) DCC is a card present and/or Ecommerce service whereby the price of the goods or services to be bought using an international Card which is converted from the applicable local currency of the Merchant (e.g., the currency assigned to your MID such as NZ\$, AU\$ or £GBP (**Local Currency**)) into the currency of the Card Issuer's country of issue (**Transaction Currency**) at the point of sale (**Eligible DCC Transaction**). The exchange rate is provided on the Terminal and the Cardholder has an option to pay in the Transaction Currency.
- (c) The following information must be displayed, or relevant functions enabled, on the Terminal:
  - (i) Price of the goods or services in the Local Currency;
  - (ii) A choice of currencies, including the option of paying in the Local Currency and the Transaction Currency;
  - (iii) Exchange rate including commission (for express or priority check-out transactions only an indicative rate will be available);
  - (iv) The rate of the commission;
  - (v) Total price in the Transaction Currency, accompanied by the words "*transaction currency*" (for express or priority check-out transactions only an indicative rate will be available);
  - (vi) Currency symbols of the Local Currency and the Transaction Currency;
  - (vii) The Cardholder's choice of currency is final.
- (d) Following completion of the DCC Transaction, you must provide the Customer with a Transaction Record that sets out the information in 1(c) above.
- (e) For each DCC Transaction, we will pay into your Nominated Bank Account the full amount of the Local Currency price of the goods or services supplied under the DCC Transaction.

###### 2) Chargebacks and Refunds

- (a) Windcave will process any Chargebacks in the Local Currency using an exchange rate determined by us. Chargebacks will be settled by debiting your Nominated Bank Account with the Local Currency equivalent of the Transaction Currency Chargeback, which may be more or less than the Local Currency amount credited to your Nominated Bank Account for the original sales transaction.
- (b) You must process any Refunds in the Transaction Currency used in the original Transaction. Refunds will be settled by debiting your Nominated Bank Account with the Local Currency equivalent of the Transaction Currency, which may be more or less than the Local Currency amount credited to your Nominated Bank Account for the original sales transaction.

###### 3) Your obligations

- (a) You must not influence the Cardholder's choice between paying in the Transaction Currency or in Local Currency.
- (b) You must provide sufficient training to your staff on an ongoing basis to enable them to properly complete DCC Transactions.
- (c) You must be fully compliant with all applicable standards including Payment Scheme Regulations and Security Standards at all times while using DCC and Merchant Services. We may carry out risk assessments from time to time to assess whether your risk profile has changed.
- (d) You agree that if any DCC transaction does not, or you do not, comply with the terms of this Appendix then the Transaction(s) will be invalid.

###### 4) Rebate

- (a) You are entitled to a rebate of the total monthly Local Currency amount settled to you for Eligible DCC Transactions, which will be credited in the monthly invoice. This Rebate amount is specified by Windcave.

###### 5) Third party services providers and data

- (a) In NZ only we use Pure Commerce (Pure Commerce Pty Limited ABN 99 002 102 089 of 309 Pitt St, Sydney NSW 2000, Australia and epay New Zealand Limited NZBN 9429036203420 of 5a Pacific Rise, Mt Wellington, Auckland, New Zealand) to provide components of DCC services we provide to you.
- (b) In addition to Pure Commerce, Windcave may contract with other third party service providers from time to time in order to provide DCC services to you.
- (c) We may at any time disclose any personal information we hold about you to Pure Commerce and/or any other third party service providers we contract with that is necessary for us to provide DCC services to you.
- (d) If you are an individual, you have the right under Applicable Law to request access to, and correction of, personal information held by us, or that we have disclosed to Pure Commerce and/or any other third party service providers.

###### 6) Suspension, Amendment or Termination

- (a) Windcave may suspend or terminate the provision of DCC services to you at its discretion without cause and with immediate effect in accordance with the Agreement.
- (b) Windcave may change or add to the terms of this Appendix at any time with immediate effect by giving notice to you.

#### APPENDIX 5

##### Multi-currency Conversion (MCC)

###### 1) MCC

- (a) This Appendix sets out the terms and conditions of MCC if you have opted to add MCC to your Merchant Services.

- (b) MCC is an Ecommerce service which allows you to sell goods or services in multiple currencies. MCC Transaction is one where you sell goods or services in a currency other than the local currency of the Merchant i.e., New Zealand dollars (**Local Currency**).
  - (c) For every MCC Transaction, Windcave will identify the currency exchange rate and charge an additional Fee called FX (foreign exchange) Margin as advised by Windcave. If a Transaction is subsequently reversed (for example, if you or we action a refund), Windcave will apply the currency exchange rate at the time of the reversal, not the rate used as at the time of the original Transaction.
  - (d) For each MCC Transaction, Windcave will pay into your Nominated Bank Account the full amount of the price of the goods or services supplied under the MCC Transaction in the Local Currency.
- 2) Chargebacks and Refunds
- (a) Windcave will process any Chargebacks in the Local Currency using an exchange rate determined by us. Chargebacks will be settled by debiting your Nominated Bank Account with the Local Currency equivalent of the Chargeback amount, which may be more or less than the Local Currency amount credited to your Nominated Bank Account for the original MCC Transaction.
  - (b) You must process any Refunds in the currency used in the original MCC Transaction. Refunds will be settled by debiting your Nominated Bank Account in the Local Currency, which may be more or less than the Local Currency amount credited to your Nominated Bank Account for the original MCC Transaction.
- 3) Your obligations
- (a) You must be fully compliant with all applicable standards including Payment Scheme Regulations and Security Standards at all times while using MCC and Merchant Services. We may carry out risk assessments from time to time to assess whether your risk profile has changed.
  - (b) You agree that if any MCC Transaction does not, or you do not, comply with the terms of this Appendix then the MCC Transaction(s) will be invalid.
- 4) Suspension, Amendment or Termination
- (a) Windcave may suspend or terminate the provision of MCC services to you at its discretion without cause and with immediate effect in accordance with the Agreement.
  - (b) Windcave may change or add to the terms of this Appendix at any time with immediate effect by giving notice to you.

- (e) the Apple Terms apply to your use of Tap to Pay;
- (f) the Merchant must be in good standing with Windcave and Apple;
- (g) Apple has the sole discretion to (i) determine the Merchant's (and their device's) eligibility to use Tap to Pay, and (ii) suspend or disable the Merchant's use of Tap to Pay in the event the Merchant (or their device) fails to meet the eligibility requirements or the Apple Terms;
- (h) Apple may require Windcave or the applicable Payment Schemes to suspend processing of Transactions for the Merchant;
- (i) Apple is not acting as a payment intermediary and under no circumstances will Apple have any responsibility for the provision of payment processing services under Applicable Law;
- (j) you consent to Windcave collecting and providing Apple all information related to you as required by Apple;
- (k) you must not use Apple Tap to Pay to conduct any Transaction that violates any law or otherwise fails to comply with Applicable Law, involves illegal drugs or non-legally prescribed controlled substances, items that create consumer safety risks, items that are intended to be used to engage in illegal activities, counterfeit or stolen goods, promotes hate, violence, or intolerance based on race, age, gender, gender identity, ethnicity, religion, or sexual orientation, constitutes fraud, infringes on or violates the intellectual property, publicity, or privacy rights of another, or shows Apple or its products in a false or derogatory light;
- (l) You accept full responsibility for the behaviour of any person you have authorised to use Tap to Pay on their eligible devices, and you must ensure such persons comply with the terms of this Agreement and Apple Terms; and
- (m) Windcave may block or reverse any Transaction that is made using Tap to Pay which is in contravention of Apple Terms.

## APPENDIX 6

### Tap to Pay

The following terms apply at all times while you are using Tap to Pay:

- (a) The terms and conditions of this Agreement apply to your use of Tap to Pay;
- (b) Windcave may disable your ability to use Tap to Pay without cause and with immediate effect;
- (c) You must comply with all applicable Payment Scheme rules and mandates; and
- (d) Windcave is not liable for any loss arising out of your use of Tap to Pay.

Before you are able to use the Tap to Pay on iPhones to receive payments, you must accept Apple's standard terms and conditions applying to the use of Tap to Pay on iPhones, which are also available here [Apple Terms](#) (**Apple Terms**).

Additionally, the following terms apply at all times while you are using Tap to Pay on iPhones: