



Eftpos Services Agreement

Introduction

This booklet sets out the Terms and Conditions for your Payment Services. Please read this booklet and retain it for future reference.

You agree to be bound by the Terms and Conditions in this Eftpos Services Agreement (as amended from time to time) from the commencement date shown on the Letter of Offer and Acceptance.

You may cancel the Services and terminate the Agreement at no charge before the earlier of your first use of the Services or 10 Business Days from the commencement date shown on the Letter of Offer and Acceptance. Termination after 10 Business Days from the commencement date or first use of the Services (whichever comes first) will be governed by Clause 20 of these Terms and Conditions and fees may apply.

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Section 1: Definitions and Construction

Definitions:

In this Agreement the following terms have the following meaning unless the context requires otherwise:

Account means the Bank account which you have nominated as your fees and Charges account.

Acquiring Bank means a bank or other financial institution who provides the card processing facility and who obtains Transactions from the Merchant and makes settlement payments to the Merchant for these Transactions.

Agreement means this agreement and includes the Letter of Offer and Acceptance, any applicable Additional Service Schedules and any Terminal User Guides, as amended by EFTPOS New Zealand from time to time.

Approved For Use means a Payment Facility certified by us for connection to the EFTPOS New Zealand Network and conforming at all times with the specifications we advise from time to time.

Bank means your bank as notified in writing by you to EFTPOS New Zealand from time to time.

Banking/Business Day means any day in New Zealand excluding a day of a weekend, a public holiday and any day on which trading banks are not open for retail business.

Card means a credit card, charge card, debit card, dual card or international debit card.

Cardholder means a person to whom a Card has been issued and who is authorised to use such a Card.

Card Issuing Organisation means an organisation authorised to issue Cards.

Card Payment System means the arrangements between EFTPOS New Zealand, banks and Card Issuing Organisations for, amongst other things, the payment of debt and the extension of credit using Cards.

Card Scheme means any organisation or scheme established to manage and determine standards and procedures for the issuance and acceptance of Cards and the settlement of transactions.

Certification means acknowledgement by EFTPOS New Zealand that the Software preserves the financial integrity of the New Zealand banking network.

Charges means the fees, any or all, as the context requires, for the Equipment and any other fees or charges payable in accordance with the terms of this Agreement, as varied or substituted from time to time under this Agreement, and set out in the Letter of Offer and Acceptance.

Confidential Information means all information about your business and EFTPOS New Zealand, the Card Payment System, and includes without limitation this Agreement, any Software, and any material supplied by EFTPOS New Zealand to you relating to the Card Payment System but does not include any information that:

- a) at the time of disclosure is published or otherwise generally available to the public;
- b) became part of the public domain after its disclosure, otherwise than through a disclosure by you or EFTPOS New Zealand in breach of this Agreement.

Cost includes a loss, expense (including legal expenses on a full indemnity basis), damages, demand, credit, relief, deduction, set-off or other liability (including loss of profit or margin).

Current Term is the term of your Letter of Offer and Acceptance, from the date it commences until the day it is completed.

Customer means the person whose name appears on the Letter of Offer and Acceptance under "Customer" or "Merchant", and is bound to this Eftpos Services Agreement.

Eftpos System means a transaction network for processing eftpos payments.

EFTPOS New Zealand means EFTPOS New Zealand Limited.

Electronic Off-line Transactions is the ability to continue processing eftpos transactions even if your eftpos terminal loses connection with the network, until the connection is restored again.

Equipment means any EFTPOS New Zealand approved device such as a terminal for carrying out transactions on the Eftpos System and/or any other equipment, software, SIM cards, or related documentation supplied and installed by EFTPOS New Zealand or its authorised agents for you in order that you may access the Services.

Indebtedness or Debt includes an obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment of money.

Initial Term has the meaning given to it in Clause 1.1.

Insolvent means:

- a) you become insolvent or are unable to pay your Indebtedness as Debts fall due;
- b) you stop or suspend, or threaten to stop or suspend, payment of any of your Debts, or begin negotiations or take any proceedings to reschedule any of your Debts;
- c) you make or propose to make, an assignment, arrangement or composition with, or for the benefit of, your creditors in respect of or affecting any of your Indebtedness;
- d) a receiver, receiver and manager (including statutory), administrator or similar official is appointed in respect of you or your business or any of your assets;
- e) a distress, attachment, execution or other legal process is levied or enforced on or against any of your assets and is not discharged or stayed within 14 days;
- f) an order is made, resolution passed or other step taken by any person for your dissolution, except for the purpose of and followed by a reconstruction or re-organisation (not involving or arising out of insolvency) on terms approved by EFTPOS New Zealand before that step is taken; or

- g) you cease or threaten to cease to carry on the whole or any substantial part of your business, or transfer, threaten to transfer or agree to transfer (whether by one or a series of transactions) the whole or any substantial part of your assets other than for reasonable consideration.

Letter of Offer and Acceptance means the letter entitled 'Letter of Offer and Acceptance for Services' sent prior to the commencement of the Services setting out terms specific to you.

Location means any premises or any other place where any Equipment is installed or a Payment Service is provided.

Merchant Account means the New Zealand bank account nominated by you from time to time for the settlement of Transactions.

Merchant Operating Guide means the Terms and Conditions and guidelines for operation of your merchant facility as provided to you by your Acquiring Bank.

Month means a calendar month.

Network Service means for the purpose of Clause 7, the services provided to EFTPOS New Zealand by a telecommunication provider, as EFTPOS New Zealand and that telecommunication provider agree from time to time.

On-line Transactions means transactions that are immediately processed electronically on-line by the Eftpos System.

Payment Facility means an eftpos Terminal or Payment Gateway connection or any other device or service that has been certified by us for use on the Verifone Network .

Payment Services means all services, subscriptions and equipment provided by EFTPOS New Zealand to the customer, as detailed in the Letter of Offer and Acceptance.

Serviced Premises means for the purposes of Clause 7, your premises or property of any kind, in which the Network Service is provided.

Services has the meaning given to it in the Letter of Offer and Acceptance.

Settlement means the process of advising the Acquiring Bank of funds to be deposited in the nominated bank account by settling the eftpos terminal.

Software means the software installed on any Equipment in object code form only, and any revisions, replacements, modifications, updates or documentation related to that software and provided to you by EFTPOS New Zealand or its authorised agents from time to time.

Subsequent Term means each term following the completion of the Initial Term (where the Agreement is renewed in accordance with Clause 1.4).

Surcharge Fee means a fee that a Merchant may apply to a Transaction for acceptance of a Credit Card for payment, this fee is not applied when payment is made via other payment mechanisms. The Surcharge Fee may be either a flat fee or a percentage of the Transaction. A Surcharge Fee may be applied to some or all of the branded cards of a Card Scheme.

Sureties or Assignees means a person to whom some right, responsibility or interest is transferred to.

Telecommunication Equipment means for the purposes of Clause 7, the equipment (including wiring, or other means by which communication is effected between two points) of a telecommunication provider used in the provision of the Network Service.

Telecommunications Network for the purposes of Clause 7, includes any means by which the Network Service is provided to EFTPOS New Zealand by a telecommunications provider and includes the Telecommunication Equipment.

Terminal means a card accepting device leased by EFTPOS New Zealand to you under this Agreement.

TerminalPLUS Cap means the maximum amount payable for the repair or replacement of the Terminal as described in section 6A.

TerminalPLUS Services Fees means the fees payable as detailed in the Letter of Offer for the TerminalPLUS service detailed in Section 6A of this Agreement applicable on a per Terminal basis.

Transaction the electronic exchange or transfer of money from one account to another.

Updates means any patches, revisions, new versions, replacements or modifications of the Software.

Verifone Network means the transaction network managed by EFTPOS New Zealand.

Verifone Network Services means the processing of transactions on the Verifone Network .

We, Us and Our means EFTPOS New Zealand.

You and Your means the Customer, and where that Customer comprises more than one person, means each of them jointly and severally, and includes employees, agents, contractors or representatives.

Construction:

In this Agreement, unless the context otherwise requires, any reference to:

- a) a gender includes each other gender;
- b) the singular includes the plural and vice versa;
- c) any legislation includes a modification or re-enactment of, legislation enacted in substitution for, or a regulation, Order in Council or other instrument from time to time issued or made under, that legislation;
- d) a party to this Agreement or another agreement includes its successors or its permitted assignees or transferees; and
- e) headings shall be disregarded in construing this Agreement.

Section 2: Subscribing to the Services

1 Term

- 1.1 This Agreement will come into effect from the commencement date shown on the Letter of Offer and Acceptance and will run for an initial term as set out in the Letter of Offer and Acceptance (Initial Term).
- 1.2 You may terminate the Agreement before the earlier of your first use of the Services and 10 Business Days from the commencement date shown on the Letter of Offer and Acceptance. Termination after your first use of the Services or 10 Business Days from the commencement date (whichever comes first) must be undertaken in accordance with the terms of the Agreement.
- 1.3 You may terminate the Agreement at the end of the Initial Term by giving us written notice at least 21 days before the end of that Initial Term, or as set out in Clause 20.
- 1.4 If you do not elect to terminate, the Agreement will be automatically renewed and will continue to roll over for the period specified in the Letter of Offer and Acceptance until you exercise your right to terminate as set out in this Agreement.

Note: You may only terminate at the end of each Term, or where you sell your business or cease to carry on business.

- 1.5 We may terminate the Agreement as set out in Clause 20.
- 1.6 If you have chosen any of the Eftpos Terminal Services, Verifone Network Services, or the PC EFTPOS Software Services, and the relevant provisions of the clauses relating to those services set out specific termination provisions, those termination provisions shall take precedence over this Clause 1.

2 Obligations

Our Obligations

- 2.1 We agree to:

- a) provide the Services as set out in the Letter of Offer and Acceptance and more fully detailed in this Agreement. You acknowledge that our ability to provide these Services is subject to the availability of third party services such as telecommunications and electricity;
- b) provide you with a range of signs and other promotional material free of charge, to be displayed at the point of sale at your retail outlets;
- c) supply you with stationery and other supplies at such cost and terms and conditions that we will notify you of from time to time.

Your Obligations — Payments

2.2 You agree to:

- a) pay the Charges (plus GST if any) to us monthly in advance by direct debit from your Account from the commencement date shown on the Letter of Offer and Acceptance, then on or before the same date of every month until termination of the Agreement;
- b) authorise us to instruct your Bank to debit or credit to your Account any deficiencies or overcharges established after audit or check by EFTPOS New Zealand of any relevant records without notice;
- c) pay any additional costs we incur as a result of a breach of this Agreement and any subsequent investigation required;
- d) pay interest (plus GST if any) on any amount that is not paid when it is due. The applicable interest rate will be set by EFTPOS New Zealand with reference to the bank overdraft rates as at the first day of the month that the amount was due to be paid;
- e) where the Charges are fixed, we will give you notice of the amount and frequency to be direct debited or deducted, as well as any subsequent change to the Charges;
- f) the fact that we may vary the Charges from time to time by written notice to you;

- g) pay, on demand, the amount of any such debt which remains unpaid.

Your Obligations - Other

2.3 You agree to:

- a) inform us of any changes to your banking arrangements to allow us to update your direct debit authorities;
- b) inform us of any material change to the nature of your business including but not limited to:
 - i) a change of address; or
 - ii) if there is a significant change in the products or services you provide.
- c) never ask a Cardholder to disclose their PIN verbally or in writing to you;
- d) ensure that any eftpos terminal which you operate is used only as permitted by this Agreement.

Section 3: Eftpos Terminal Services

This section only applies if you have subscribed to an eftpos terminal service from EFTPOS New Zealand.

3 Obligations

Our Obligations

- 3.1 During the term of this Agreement, we will:
- a) provide you with the terminal(s) and terminals accessories as set out in your Letter of Offer and Acceptance;
 - b) grant to you the non-exclusive, non-transferable right to use one copy of the Software on each piece of Equipment for the purposes of accessing the Services and for your own internal business purposes. If we make any modifications to the Equipment we will do so at our expense;
 - c) provide you access 24 hours daily to our call centre to report faults and obtain advice on how to correct them.

Your Obligations - Equipment

- 3.2 You agree:
- a) to keep the Equipment at the Location and grant us access to enable us to:
 - (i) install, inspect, remove, repair or replace the Equipment; and
 - (ii) make modifications to the Equipment (at EFTPOS New Zealand's expense).
 - b) to immediately notify us if the Equipment is lost, stolen, destroyed or damaged in any way, or is not in your possession or control;
 - c) you are liable for any loss or damage to the Equipment and agree to indemnify us for the costs of repairing or replacing (to be undertaken at our complete discretion) any Equipment, which is

lost or damaged otherwise than by normal wear and tear. We suggest you take out full replacement insurance to cover yourself for these occurrences;

- d) to assist and co-operate with us in arranging for the return of Equipment at your cost (and, if requested by us, in arranging for us to disconnect and remove Equipment) and make the Equipment available for collection by us on termination of this Agreement or at any time as we reasonably specify;
- e) to use the Equipment properly for the purpose provided and in accordance with the manufacturer's operating instructions and any Terminal Care Guide;
- f) to comply with all relevant laws relating to the possession, use and maintenance of the Equipment;
- g) you will use an eftpos terminal on the Eftpos System of a type that has been approved by us.

3.3 You will not:

- a) interfere with or alter any software within the eftpos terminal or attached cryptographic device (PIN pad);
- b) knowingly or negligently use or attempt to use the Eftpos System with a malfunctioning eftpos terminal;
- c) knowingly or negligently do or allow anything to happen which might damage or interfere with the Eftpos System or compromise the Eftpos System's security.

3.4 You agree that the Equipment remains the property of EFTPOS New Zealand and you will not:

- a) modify, alter or copy the Equipment;
- b) affix any mark or label to the Equipment;
- c) interfere in any way with the Equipment;
- d) sell, let, hire, encumber, charge, or otherwise deal with the Equipment;

- e) connect or link the Equipment with any other device or system without our prior written consent;
- f) permit anyone but EFTPOS New Zealand or its authorised agents to repair, service or maintain the Equipment.

Your Obligations - Software

- 3.5 You agree to use all reasonable efforts to protect the confidentiality of the Software and to protect the Software from unauthorised use, reproduction, distribution or publication.
- 3.6 You agree that you will not:
 - a) copy, reverse engineer, or disassemble or modify or attempt to modify the Software in any way in an attempt to duplicate the Software or imitate any of its functions or otherwise;
 - b) remove or obscure any copyright, trademark or other proprietary notice on the Software;
 - c) sell, lease, sub-licence, lend, assign, or transfer, in whole or in part, or provide unlicensed third parties access to the Software.

Section 4: Verifone Network Services

This section only applies if you process eftpos Transactions on the Verifone Network .

4 Obligations

Our Obligations

- 4.1 During the term of this Agreement, we will:
- a) provide you with access to and use of the Verifone Network , on the terms contained in this Agreement;
 - b) take all reasonable steps practicable to maintain the Verifone Network in proper working condition to provide a continuous and accurate service to you;
 - c) provide you access 24 hours daily to our call centre to report faults and obtain advice on how to correct them.
- 4.2 We will facilitate the depositing of funds from Transactions processed via your Payment Facility to the account the Acquiring Bank has advised to us as being the Merchant Account.
- 4.3 We will ensure that the process necessary to effect Settlement and deposit value for approved transactions to your Merchant Account is initiated. However, you acknowledge that the obligation to settle Transactions with you is an obligation of the relevant Acquiring Bank or Card Issuer and will be undertaken in accordance with their respective agreements with you and/or their Merchant Operating Guide. It is not our obligation. We will not be liable to you in any way for any amount payable to, or receivable by, you arising out of any Transaction.

Your Obligations - General

- 4.4 You declare and undertake that your part in the processing of any transaction will not breach any laws or regulations in New Zealand or any other country.

- 4.5 You may use any Payment Facility on the Verifone Network only for as long as that type of Payment Facility is Approved For Use.
- 4.6 Without limiting 4.5 above, you must cooperate with the installation of Software or hardware upgrades that we supply from time to time to ensure the Payment Facility maintains an Approved For Use status and comply with our instructions regarding the use of terminals and Software applications.
- 4.7 You must notify us promptly if you become aware of any problems with the Verifone Network that affect your ability to access or use the Network Services.
- 4.8 You must comply with your Acquiring Bank's requirements for the operation of your Payment Facility as described in their Merchant Operating Guide including, but not limited to, the requirements to maintain the confidentiality of Cardholder details and the requirements to verify Cardholder identity.
- 4.9 You will be responsible for payment of any additional Network Service and communication fees including, but not limited to:
 - (a) the provision of a SIM Card for use in the GPRS terminals as detailed in your Letter of Offer and Acceptance;
 - (b) the fee associated with transacting via IP as detailed in your Letter of Offer and Acceptance.

Your Obligations - Electronic Off-line Transactions

From time to time the Verifone Network may be unavailable, for reasons such as telecommunications errors, power outages or system faults. When this occurs your terminal is unable to go online to process Transactions.

- 4.10 You agree that:
 - a) all transactions will be processed as On-line Transactions when electronic authorisation is available through the Eftpos System;
 - b) you may only process Electronic Off-line Transactions if electronic authorisation is not available through the Eftpos System;

- c) if the Verifone Network is unavailable, and Electronic Offline Voucher (EOV) mode on your terminal is available, you may choose to take payment by processing Transactions in EOV mode;
- 4.11 If you complete an Electronic Off-line Transaction and the eftpos Transaction is stored within a point of sale device attached to the eftpos terminal, such point of sale device must be secure against unauthorised access.
- 4.12 Notwithstanding 4.10 and 4.11 above, when any Off-line Transaction is conducted, it must be undertaken in accordance with your Acquiring Bank's requirements as described in their Merchant Operating Guide.
- 4.13 We are not responsible for any loss of stored Transactions should the terminal malfunction prior to uploading the transactions to the Verifone Network .

5 Settlement

- 5.1 You may initiate Settlement in respect of all or any of your eftpos terminals as set out in your Acquiring Bank's Merchant Operating Guide.
- 5.2 If, at the end of the Settlement period selected by you, you have not initiated Settlement, we will take all reasonable steps to force Settlement. We shall not be liable for any loss or costs incurred by you not effecting Settlement.
- 5.3 Where Settlement is effected on a day other than a Banking Day, we will use all reasonable endeavours to ensure that you receive value on the next Banking Day.

6 Suspension of the Eftpos System

- 6.1 We may suspend the availability of the Eftpos System in respect of various types of Cards for such period or periods as we may consider appropriate if:
- a) we reasonably consider that the principles of prudent banking require such action; or

- b) an Authorised Institution has suspended the use of those types of its Cards in the Eftpos System.
- 6.2 We will use all reasonable endeavours to give you written notice of suspension of Card types, after we have received notification. For the purposes of this Clause, we may give notice to you by publishing a general notice on our website and in major daily metropolitan newspapers in Auckland, Wellington, Christchurch and Dunedin.
- 6.3 For the avoidance of doubt, we are not required to notify you of the suspension of individual Cards from use on the Eftpos System if such Cards are suspended because they are suspected of having been stolen or fraudulently used or abused.

7 Use of Telecommunications Network

Use of Network Service

- 7.1 You will comply with any notice, whether general or specific, from us relating to the use of the Telecommunications Network Service.

Change in Telecommunications Type

- 7.2 If you propose to connect any terminal or Equipment to the Telecommunications Network which is of a type or specification which you have not had connected to the Telecommunications Network before, it is your responsibility to ensure your Payment Services continue to operate.

Maintenance and Repair

- 7.3 You acknowledge that no person other than a person authorised by a telecommunications provider will maintain, repair or interfere with any part of the Telecommunications Network. You will provide access to the Serviced Premises at all reasonable hours for the telecommunications provider to install, remove, modify, repair, maintain, inspect, test, suspend or terminate the Network Service, any part of the Telecommunications Network, or anything connected to the Telecommunications Network or used in association with the Telecommunications Network or the Network Service.

Replacement

- 7.4 If any part of the Telecommunications Network on the Serviced Premises is lost, stolen, destroyed or damaged through any means other than by fair wear and tear, inherent defect, fire, flood, earthquake or other inevitable catastrophe, you will, on demand, pay EFTPOS New Zealand (on behalf of the telecommunications provider) the cost of replacing or repairing that part of the Telecommunications Network.

Liability

- 7.5 For the avoidance of doubt, EFTPOS New Zealand will not be liable for any transaction processing issues or business interruption resulting from any failure in connectivity due to faults with the Telecommunications Network.

Section 5: PC EFTPOS Software Services

If your Letter of Offer and Acceptance includes the PC EFTPOS software solution, you must comply with the terms and conditions of this section and the terms and conditions of the Eftpos Services Agreement.

Terms and Conditions

8 Grant of Licence

- 8.1 EFTPOS New Zealand is the sole and exclusive owner of the Software and upon execution of this Agreement, grants to you, and you accept, either:
- a) a perpetual, non-exclusive, non-transferable licence where you have paid a one-off licence fee; or
 - b) a non-exclusive, non-transferable licence for a term agreed by us where you are being supplied the Software under this Agreement (a 'Term Licence').
- 8.2 This licence allows you to use the number of copies of the Software set out in the Letter of Offer and Acceptance on the Designated Equipment for the purposes of processing electronic transactions for your own internal business purposes on the terms and conditions of this Agreement. Where no number is specified in the Letter of Offer and Acceptance, the default number of licenses shall be '1'.
- 8.3 EFTPOS New Zealand may offer information on Updates at such cost (if any) as may be notified to you from time to time.
- 8.4 You may use the Software on computer hardware other than the Designated Equipment, if the Designated Equipment is temporarily unavailable or if EFTPOS New Zealand gives its prior written consent to such use.

9 Fees

- 9.1 On the execution of this Agreement you must pay the licence fee (plus GST) as set out in the Letter of Offer and Acceptance.
- 9.2 You must pay any costs associated with the provision of Updates.

10 Your Undertakings

10.1 You must ensure that you and those who you are responsible for:

- a) do not copy the Software (other than for normal system operation or for back-up purposes);
- b) do not translate, adapt, vary or modify the Software;
- c) do not reverse engineer, decompile, or disassemble the Software in an attempt to duplicate the Software or imitate any of its functions or otherwise;
- d) do not remove or obscure any copyright, trademark or other proprietary notice on the Software and ensure that any back-up copy of the Software includes EFTPOS New Zealand's copyright notice;
- e) do not sell, lease, sub-licence, lend, assign, host or transfer, in whole or in part, or provide unlicensed third parties access to the Software (including for hosting purposes) or purport to do any of these things without EFTPOS New Zealand's prior written consent;
- f) maintain accurate and up-to-date records of the number and location of all copies of the Software;
- g) use all reasonable efforts to protect the Software from unauthorised use, reproduction, distribution or publication and keep the Software confidential;
- h) accept and install all Updates notified to you by EFTPOS New Zealand.

11 Representations and Warranties

11.1 You agree that EFTPOS New Zealand, and anyone that EFTPOS New Zealand is responsible for, is not liable to you in tort (including negligence), contract, equity or on any other basis arising from the relationship between you and EFTPOS New Zealand for any loss, damage or injury incurred by you arising directly or indirectly from use or possession of the Software or from this Agreement.

- 11.2 If, despite the other provisions of this Agreement, EFTPOS New Zealand is found to be liable to you then its liability for any single event or series of related events is limited to the licence fee you paid for the Software.
- 11.3 You acknowledge that the Software is not error-free and agree that the existence of such errors shall not constitute a breach of this Agreement. In the event that the Software does not perform substantially in accordance with the documentation provided with it, EFTPOS New Zealand shall remedy such error free of charge provided such error:
- a) is notified to EFTPOS New Zealand within six months of the commencement of this Agreement; and
 - b) is not as a result of your breach of this Agreement; and
 - c) is not attributable to any third party software or hardware; and
 - d) is not attributed to a change in the customer's operating environment.
- 11.4 Where you have a Term Licence or a separate service agreement or extended warranty with EFTPOS New Zealand, EFTPOS New Zealand shall remedy errors in accordance with the Term Licence or service agreement or extended warranty.
- 11.5 All other warranties, representations or conditions with respect to the Software, whether express or implied, are expressly excluded to the fullest extent permitted by law.
- 11.6 You confirm that you are licensing and using the Software for the purposes of a business, and that the Consumer Guarantees Act 1993 does not apply to the Software.
- 11.7 Subject to the limited warranty set out above, you agree that EFTPOS New Zealand is not obliged to provide any support or maintenance in respect of the Software (including work required by EFTPOS New Zealand for Certification) but that any support and maintenance EFTPOS New Zealand does provide you in relation to the Software (including Certification) will be provided to you on EFTPOS New Zealand's standard terms and at your cost.

12 Intellectual Property Rights

- 12.1 You confirm that title to the Software, and all intellectual property rights relating to the Software, are and shall remain the sole property of EFTPOS New Zealand.

13 Termination

- 13.1 EFTPOS New Zealand may terminate the PC EFTPOS Software Services at any time by giving you at least 60 days written notice.
- 13.2 EFTPOS New Zealand may terminate the PC EFTPOS Software Services immediately if you breach any of the terms of this Section or any services agreement relating to the Software.
- 13.3 Upon termination of the PC EFTPOS Software Services you must immediately destroy or return to EFTPOS New Zealand all copies of the Software and any other information or documentation EFTPOS New Zealand has made available to you in relation to this Agreement.

Section 6: Credit Card Surcharge Fee

If your Letter of Offer and Acceptance includes the Surcharge solution, you must comply with the terms and conditions of this section and the terms and conditions of the Eftpos Services Agreement.

14 Terms and Conditions

14.1 Under the Nominated Card Scheme Regulations in New Zealand, you are permitted to charge Credit Card Cardholders a Surcharge Fee when these cards are used in a Transaction. For the purposes of this Agreement Credit Card means a payment card issued by a Card Issuing Organisation that is used as a credit card for credit transactions.

15 Indemnification

15.1 You agree to indemnify and hold EFTPOS New Zealand, their employees, agents, contractors and representatives harmless from any liability, loss or damage you may suffer as a result of claims, demands, costs or judgments against you arising out of the activities to be carried out pursuant to your obligations in accordance with Clause 14.1

16 Your Obligations

16.1 If you add a Surcharge Fee to your normal prices when a Cardholder chooses to pay with a Credit Card, you must:

- a) clearly display notices, signs or decals at your physical premises, **as well as** a notice next to your point of sale, in a minimum of Arial 10 point font, disclosing that you will apply a Surcharge Fee when payment is made by Credit Card. In the absence of a physical point of sale, such notices or signs must be displayed prominently during an Internet order Transaction or communicated clearly in a telephone order, in each case prior to the Transaction being processed;
- b) ensure the Surcharge Fee is clearly disclosed to the Cardholder prior to the completion of the transaction and give the Cardholder

the opportunity to cancel once the Surcharge Fee has been disclosed;

- c) ensure the Surcharge Fee bears a reasonable relationship to your cost of accepting the Credit Card and that the Cardholder is informed of the rate, amount or method of calculation of the Surcharge Fee at the time of purchase. If a Surcharge Fee is to be imposed it may be applied on a fixed fee or percentage basis;
- d) ensure the Surcharge Fee is processed as part of the total amount of the Transaction and not collected separately;
- e) not describe the Surcharge Fee as, or inform the Cardholder that the Surcharge Fee is, applied by a Card Scheme, EFTPOS New Zealand or a third party financial institution;
- f) be aware that you may apply a Surcharge Fee to any or all the branded cards of a Card Scheme;
- g) ensure that, in the case of a Visa Transaction, the Transaction receipt displays:
 - Merchant name
 - Merchant city and country
 - Transaction amount (or credit), indicated in transaction currency
 - Surcharge Fee (or credit), indicated in transaction currency
 - Total amount (or credit), indicated in transaction currency
 - Transaction date (or credit) preparation date
 - Account Number (Cardholder copy must have Truncated Account Number)
 - Space for Cardholder signature or PIN Verification notation (if Chip & PIN)
 - Authorisation Code
 - Transaction type (purchase or credit).

- 16.2 Nothing in this Agreement prohibits you from steering Cardholders to other forms of payment by offering discounts, promotions or financial incentives to encourage Cardholders to use other forms of payment (including as between Card Schemes' Cards and EFTPOS, or Cards from different Card Schemes, or different types of a particular Card Scheme's Cards).

Section 6A: TerminalPLUS Services

This section only applies if you have subscribed to an Eftpos Terminal Service from EFTPOS New Zealand and your Letter of Offer includes the supply of the TerminalPLUS Service.

TerminalPlus Service obligations

16.3 ENZ obligations

If you return a Terminal to EFTPOS New Zealand for repair (return of the Terminal by courier is at EFTPOS New Zealand's cost), the charges to repair the Terminal will be in accordance with EFTPOS New Zealand's then current repair rates capped at the amount of NZ\$249 plus GST per terminal. This TerminalPLUS Cap applies regardless of the cause of damage and covers spare parts and labour costs.

Where the Terminal is determined by EFTPOS New Zealand to be irreparable EFTPOS New Zealand will replace the Terminal with another Terminal of the same model at a cost to you of NZ\$249 plus GST. No charge for the secure destruction of the irreparable Terminal will apply.

EFTPOS New Zealand will return the repaired or replacement Terminals to you at EFTPOS New Zealand's cost.

16.4 Your obligations

In consideration of the receipt of the TerminalPLUS service as described in this Section 6A you will pay to EFTPOS New Zealand the monthly TerminalPLUS Services Fee in accordance with the Letter of Offer.

16.5 Payment

Payment terms for the TerminalPLUS Services Fee and for the repairs under this Schedule 6A shall be in accordance with the payment terms described in this Agreement. EFTPOS New Zealand will issue invoices for the fees for the repairs upon completion of the repairs.

Section 7: Software Maintenance Fee

This section only applies if you purchased your terminal(s) from EFTPOS New Zealand and you process transactions over the Verifone Network.

17 Overview

- 17.1. All Terminals purchased from EFTPOS New Zealand and transacting on the Verifone Network will attract a software maintenance fee of \$5 + GST per terminal per month. The fee is charged to the customer who purchased the terminal.
- 17.2. If a customer chooses to lease their Terminal from EFTPOS New Zealand, the software maintenance fee is included in the monthly rental fee.
- 17.3. The Terminals shall automatically connect to the EFTPOS New Zealand terminal management system on a regular basis and download the latest version of software available.
- 17.4. The monthly software maintenance fee covers automatic software updates completed by the EFTPOS New Zealand terminal management system from time to time.
- 17.5. The monthly software maintenance fee is applicable to all Terminals purchased directly from EFTPOS New Zealand
- 17.6. Software upgrades that are manually performed by the EFTPOS New Zealand repair centre will incur a fee at the then current rate for manual software upgrades i.e. Terminal changes from the Verifone Network to the Paymark network will incur this fee.
- 17.7. The monthly software maintenance fee does not include upgrading or maintaining the Terminals.

18 Cancellation

- 18.1 You may cancel the software support services provided under this Section 7 in relation to a Terminal if;
 - a) The Terminal and or PIN Pad is sent for repair and cannot be repaired

- b) You notify EFTPOS New Zealand that PIN Pad is lost, stolen or damaged
- c) Terminal and or PIN Pad reaches PCI sunset date
- d) PCI approval or EMV approval is revoked

18.2 EFTPOS New Zealand may end of life a product before one of the above events takes place and in which case may cease to provide these software support services.

Section 8: General Provisions

19 Promotion of the Services

- 19.1 You agree to only use advertising or promotional material we have authorised.
- 19.2 You will actively promote the availability of the Eftpos System for Transactions to your customers on an ongoing basis during the Term of this Agreement and will ensure that all signs and other promotional material will be displayed, unaltered, in a prominent position within your retail outlets.
- 19.3 Subject to Clause 19.4, we hereby grant you a non-exclusive licence to use the EFTPOS New Zealand logo solely for the purpose of promoting eftpos and card payments to your customers.
- 19.4 Except in the case of promotional material supplied by us, you agree to refer promotional material relating to the Eftpos System to us for our approval before it is used. You will only be entitled to use the EFTPOS New Zealand logos for the promotion of eftpos and the Eftpos System in accordance with the guidelines set down by us from time to time.
- 19.5 The non-exclusive licences granted by us to you under this Clause will terminate five Business Days after termination of this Agreement.

20 How can this Agreement be Terminated?

- 20.1 You may only terminate this Agreement:
- a) in accordance with Clause 1.2; or
 - b) at the end of the Initial Term or each Subsequent Term. You must provide us with at least 21 days prior written notice of termination under this Clause; or
 - c) upon at least six months prior written notice of termination if;
 - (i) you cease to carry on the whole of your business, or sell the business as a going concern to a buyer unrelated to you; and
 - (ii) you provide ENZ with sufficient evidence, in its sole discretion, of compliance with the requirement in clause (i) hereof.

20.2 If you terminate this Agreement before the end of the Initial Term or a Subsequent Term, you authorise us to authorise your Bank to debit your Account and credit us with fees as set out in Clause 22.

20.3 We may terminate this Agreement:

- a) at any time by giving you at least 21 days' written notice; or
- b) immediately if a termination event as set out in Clause 21 occurs; or
- c) immediately if we reasonably determine that the continued provision of the Services to you may damage our reputation or may result in us or you suffering a loss; or
- d) immediately if we are unable to continue to provide the Services for any reason.

20.4 If this Agreement is terminated for whatever reason you agree to:

- a) return to us at your cost any Equipment; and
- b) all information, including without limitation, stationery and promotional material, including the decals, provided by EFTPOS New Zealand relating to the Equipment which you have in your possession; and
- c) cancel any automatic payments in favour of EFTPOS New Zealand.

21 What is a Termination Event?

21.1 We may terminate this Agreement immediately if:

- a) any amount payable by you to us is overdue, or in our opinion you are unlikely to be able to meet your payment or other obligations to us; or
- b) you are in breach of any provision of this Agreement and where such breach is capable of remedy such breach is not remedied within fourteen (14) days following the giving of written notice of such breach by us to you requesting the same to be remedied; or
- c) you become Insolvent; or

- d) you cease to carry on the whole or any substantial part of your business, you transfer or agree to transfer the ownership or effective control of your business, or change the ownership or effective control of your business, or the nature of your business is materially altered; or
- e) you dispose of or otherwise lose possession of any Equipment; or
- f) you act fraudulently or illegally in relation to this Agreement or the subject matter of this Agreement or you process a transaction on the Eftpos System that you know or ought to have known was fraudulent; or
- g) you default under any lease or licence relating to the Location (if applicable); or
- h) your card processing facility is terminated or cancelled by your Acquiring Bank and you are unable to establish a replacement facility with another Acquiring Bank.

22 What are the Consequences of Termination?

- 22.1 If you terminate the Agreement in breach of Clause 20 you agree to pay the balance of any Charges that would have been payable up to the end of the Current Term.
- 22.2 Upon termination of this Agreement for any reason, you will no longer be able to use your Equipment to effect transactions on the Eftpos System.
- 22.3 If you do not return any Equipment we will continue to charge the Charges until all Equipment is returned.
- 22.4 If you terminate the Agreement due to the sale of your business or ceasing to carry on business without;
 - (i) giving the required six months notice, we may charge you for any Charges as listed on your Letter of Offer and Acceptance that would have been payable up to the end of the Current Term (to a maximum of six months), less the terminal rental fee and any other fees actually paid from the date you gave notice of termination until the termination; or

(ii) providing ENZ with sufficient evidence, in its sole discretion, that you have or are you ceasing to carry on the whole of your business, or that you have or are selling the business as a going concern to a buyer unrelated to you, then we may charge you any Charges as listed on your Letter of Offer and Acceptance that would have been payable up to the end of the Current Term less the terminal rental fee and any other fees actually paid from the date you gave notice of termination until the termination.

- 22.5 We may reclaim any Equipment and for that purpose we are entitled without notice to use reasonable force to enter, directly or by our authorised agents, any premises where we believe Equipment may be located, without in any way being liable to any person. You must indemnify us for any costs incurred in exercising our right to reclaim the items.
- 22.6 Without limiting any other rights we may have, we will be entitled to take (at your cost) all steps we consider necessary to remedy any breach of this Agreement and/or to protect our interest in any Equipment and in any documentation relating to this Agreement.
- 22.7 The termination of this Agreement by either party shall not affect any obligations owed by you prior to termination (including, without limitation, any outstanding Charges) or after termination (including, without limitation, liability for outstanding Charges such as equipment identified after its return as having suffered damage for which the customer is usually liable).
- 22.8 Upon termination of this Agreement you authorise us to:
- a) disclose to any person the fact that all or part of this Agreement has been terminated;
 - b) you acknowledge that the disclosure of this information may affect your ability to successfully apply for Payment Services in the future.

23 What Warranties do I Provide to EFTPOS New Zealand?

- 23.1 Unless you have disclosed to us that you are acting in a trustee capacity or on behalf of another party, you warrant that you are acting on your own behalf in entering into this Agreement.

24 In What Circumstances will I have to Indemnify EFTPOS New Zealand?

- 24.1 You agree to indemnify and keep EFTPOS New Zealand indemnified against any losses, claims, damages, expenses (including legal costs), liabilities (including penalties) or proceedings incurred at any time by us arising out of or as a consequence of a breach of this Agreement or the use of any Equipment by you, and also against any loss or damage whatsoever which may be caused to any Equipment excluding reasonable wear and tear.
- 24.2 You agree to indemnify and keep us indemnified against any losses, expenses (including legal costs), damages, claims, liabilities (including penalties) or proceedings which any of them may suffer or incur as a result of or arising from:
- a) your failure to observe any of your obligations under this Agreement; or
 - b) fraudulent data input by you where you enter transactions through any Equipment; or
 - c) fraudulent activity carried out using Card details obtained through your negligence.
- 24.3 If you breach this Agreement or any material provision of any regulations set by the Card Scheme applied generally across all merchants and those notified by the banks in writing then, in addition to any remedy we may have elsewhere in this Agreement, you agree to indemnify and keep indemnified EFTPOS New Zealand against all losses, claims, damages, expenses (including legal costs), liabilities (including penalties) or proceedings that we, our employees or agents may incur under any such Card Scheme regulations as a direct or indirect result of your breach.

- 24.4 You authorise us to withdraw from your bank account the amount certified by us to be the amount payable under this indemnity.

25 What is Our Liability?

- 25.1 We will use our best endeavours to maintain the operation of the Eftpos System at all times. However, systems errors, maintenance or other events may cause the Eftpos System to be unavailable at certain times. During those periods, alternative methods for you to process payments will be available (see Clauses 4.10 - 4.13 for more information on these methods) and we will always endeavour to return the system to full operation as soon as possible.
- 25.2 You agree that we are not liable to you in contract, under statute, in tort (including negligence), in equity or otherwise for any loss, claims, expenses (including legal costs), liabilities, proceedings, injury or damage, whether arising directly or indirectly for:
- a) any supply or non-supply of the Services; or
 - b) any loss of business, profits, or any other consequential or indirect loss or damage, suffered by you due to us failing to perform or breaching any of our obligations under this Agreement; or
 - c) any failure to keep the Card Payment System and/or the Eftpos System functioning.
- 25.3 If, despite the other provisions of this Agreement, we are found to be liable to you then, without limiting your obligation to indemnify us as set out in Clause 24, our total liability to you is limited to an amount equal to two months' Charges at the rate prevailing at the time the liability arose.

26 Variations

- 26.1 We may amend the terms of this Agreement at any time by giving at least 14 days' notice in writing to you.

27 Your Information

- 27.1 Information you provide to us will be kept strictly confidential and will be securely held by EFTPOS New Zealand. If you are an individual, you have the right to access your personal information (within the meaning of the Privacy Act 1993) and request correction of any errors in that information. A fee may be payable for this.
- 27.2 EFTPOS New Zealand may obtain such information and make such enquiries about you as EFTPOS New Zealand may consider warranted from any source, including credit reference agencies. EFTPOS New Zealand may contact the source of any information that you provide to EFTPOS New Zealand in order to check the accuracy of the information and you authorise any person we approach to provide the above information to EFTPOS New Zealand.
- 27.3 EFTPOS New Zealand may use the information provided to:
- a) consider your application for Equipment or other Payment Services;
 - b) meet our obligations under this Agreement and any other banking facility or service and participate in the Card Payment System;
 - c) administer, manage and monitor any contracts and Payment Services you hold with EFTPOS New Zealand;
 - d) conduct market research, data processing and statistical analysis; and
 - e) unless you disagree, provide you with information from time to time about other facilities, products and services provided by EFTPOS New Zealand or any other person with which EFTPOS New Zealand has a business relationship. Where we provide this information by email or SMS text message, we may not always provide a functional unsubscribe facility within the email or SMS text message itself.
- 27.4 EFTPOS New Zealand may disclose information about you for the above purposes to:

- a) agents or contractors of EFTPOS New Zealand; or
 - b) Card Issuing Organisations and Acquiring Banks; or
 - c) Sureties or Assignees or anyone who is considering becoming a Surety or Assignee.
- 27.5 You agree that we may disclose information about you to credit reference agencies or debt collection agencies, including details of any defaults in payments or repayments of your financial facilities. Those agencies may retain that information and provide it to their customers who use their credit reporting services.
- 27.6 You agree that EFTPOS New Zealand may disclose any information concerning you to any law enforcement, regulatory agency or court where required by any law or regulation in New Zealand or elsewhere. If we receive a request from certain agencies to release your information, we may not be able to tell you that the request has been received. EFTPOS New Zealand may also disclose information to the police, certain government agencies or other financial institutions where we reasonably believe that the disclosure will assist in the investigation, detection and/or prevention of fraud or other criminal offences.

28 Disputes

- 28.1 In the event a dispute arises in relation to this Agreement, we both agree to use our best endeavours to resolve the dispute through good faith negotiations.
- 28.2 We both agree that:
- a) in the first instance one party shall give notice of, and attempt to resolve, any dispute with the other party;
 - b) we shall both continue to perform our respective obligations under this Agreement as far as possible as if no dispute had arisen and pending the final settlement of any dispute.
- 28.3 Nothing in this clause prevents us from taking immediate steps to seek injunctive relief before a New Zealand Court.

Disputes with a Cardholder

- 28.4 You acknowledge that any dispute between you and a Cardholder arising directly or indirectly out of this Agreement or the Card Payment System or the Eftpos System, is entirely between you and the Cardholder and you shall not involve us in any such dispute although we may become involved if we consider it is in our best interests to do so.
- 28.5 If you are unable to resolve the dispute with a Cardholder, you should refer the Cardholder to their Card Issuing Organisation and contact your Acquiring bank for further advice and assistance.

29 Title

- 29.1 You agree that ownership of the Equipment and the Software remains with EFTPOS New Zealand.

30 Intellectual Property

- 30.1 You agree that all intellectual property in the Equipment, the Software, any modifications to the Equipment and/or Software, designs, trademarks, copyright, business and domain names, remain the property of EFTPOS New Zealand.

31 Inconsistency

- 31.1 In the event of an inconsistency between the Terms and Conditions and the Section 5: PC EFTPOS Software Services, the PC EFTPOS Software Services shall prevail.

32 Fraudulent Activity

- 32.1 You agree that we may, at our sole discretion investigate any suspected fraudulent activity by you.

33 Waiver

- 33.1 Our rights under this Agreement cannot be waived except by our giving you written notice waiving the particular right. In particular:

- a) we do not waive any right that we have in connection with this Agreement merely because we do not exercise it, or do not exercise it as soon as we can; and
- b) if we exercise a right once or partly, it does not mean that we cannot exercise that right again or other rights.

34 Consumer Guarantees Act

- 34.1 Where you are a business (or hold yourself out as acquiring goods and services for the purpose of a business) no rights or remedies under the Consumer Guarantees Act 1993 shall apply in respect of goods or services supplied by us.

35 Warranties

- 35.1 All warranties, descriptions, representations or conditions, whether implied by statute or by law, trade, custom or otherwise, are excluded to the extent permitted by law.

36 Other Arrangements

- 36.1 Nothing in this Agreement affects any existing arrangements we may have nor restricts our ability to enter into any future arrangements with third parties to provide the Eftpos System or Eftpos Service in a similar capacity.

37 Assignment

- 37.1 We may assign any of our rights, interest and obligations under this Agreement on giving you written notice to that effect, but no such notice will be required where the assignment is to any related company of EFTPOS New Zealand.
- 37.2 You may not assign or in any other way transfer any of your rights, interest or obligations under this Agreement without EFTPOS New Zealand's prior written consent.

38 Additional Services

- 38.1 We may:

- a) offer additional Services to you in connection with any of the Services offered under this Agreement. If you choose to use any additional Service offered, we will notify you of the Charges at or as soon as practicable after, the time the Service is provided.
- b) add new additional Services from time to time, and will set out the terms and conditions of these services in a new Section. If we offer that new Service to you and provide you with a copy of the new Section, and you choose to accept that Service, then you agree to comply with the provision of that new Section.

39 Address and Notices

39.1 You must notify us immediately in writing if you change your address.

39.2 Any notices or accounts under this Agreement from us to you may be delivered by post, facsimile, email or handed to you at the address set out in the Letter of Offer and Acceptance or as provided by you and stored by us and will be treated as having been received three days after posting, at the time of hand delivery or facsimile transmission or at the time when the email enters your information system.

39.3 Any notices under this Agreement from you to EFTPOS New Zealand must be delivered to:

EFTPOS New Zealand Limited
PO Box 3457
Wellington 6140

40 Confidentiality

40.1 Both parties agree not to:

- a) disclose to any person any Confidential Information relating to the other party unless required to do so by law;
- b) use any Confidential Information of the other party for its own purposes.

41 Other

- 41.1 If any provision or part of this Agreement is held to be invalid, illegal, uncertain or unenforceable, the validity, legality, certainty and enforceability of the remaining provisions will not be in any way affected or impaired.
- 41.2 Both parties agree that nothing in this Agreement shall be deemed to constitute a partnership or joint venture between the parties. Neither party has the authority to bind the other party in any way.
- 41.3 For the purposes of the Contracts (Privity) Act 1982 you agree that the covenants contained in this Agreement, which refer to the Card Issuing Organisations are given for the benefit of the Card Issuing Organisations individually and are enforceable by each Card Issuing Organisation.
- 41.4 This Agreement is governed by the laws of New Zealand.